

***REPUBLIC OF MONTENEGRO  
DECREE ON THE PROCLAMATION OF  
THE LAW ON GENERAL  
ADMINISTRATIVE PROCEDURE***

On the basis of Article 88, item 2 of the Constitution of the Republic of Montenegro, I am passing the

**D E C R E E**

**ON THE PROCLAMATION OF THE LAW ON GENERAL ADMINISTRATIVE PROCEDURE**

**(“Official Gazette of the RMN”, No. 60/03, 28.10.2003)**

The Law on General Administrative Procedure, which was passed by the Parliament of the Republic of Montenegro on the first session of its second regular sitting in 2003, on October 21, 2003, is proclaimed.

No. 01-1093/2

Podgorica, October 22, 2003

The President of the Republic of Montenegro

**Filip Vujanović, (signed personally)**

**THE LAW ON GENERAL ADMINISTRATIVE PROCEDURE  
PART ONE  
GENERAL PROVISIONS**

**Chapter I  
BASIC PRINCIPLES**

***Application of the Law***

**Article 1**

State authorities and local self-government authorities shall proceed in compliance with the provisions of this Law, directly applying the legal regulations, when deciding in administrative matters on rights, obligations or legal interests of a private person, legal person or other party, as well as when they perform other affairs determined by this Law.

**Article 2**

Institutions and other legal persons shall also proceed in compliance with the provisions of this Law when, in exercising public authority, they decide, i.e. perform other affairs mentioned in Article 1 of this Law.

**Article 3**

The provisions of the Law, which, due to the specific character of administrative matters in different administrative domains, regulate necessary exceptions to the rules of the general

administrative procedure, must be in line with the basic principles determined by this Law.

### ***The Principle of Legality***

#### **Article 4**

- (1) A state authority, a local self-government authority, as well as institutions and other legal persons (hereinafter: authorities) proceeding in administrative matters shall decide in accordance with the law and other regulations.
- (2) In administrative matters, in which an authority is statutorily authorized to make a discretionary decision, the decision shall stay within the framework of the authorization and shall be in accordance with the objective for which the authorization had been given.

### ***The Principle of Protection of Citizens' Rights and of Protection of the Public Interest***

#### **Article 5**

- (1) When conducting a procedure and deciding in administrative matters, the authorities shall enable parties to as easily as possible protect and realize their rights and legal interests, taking into account that the realization of their rights and legal interests shall not be to the detriment of rights and legal interests of other persons, or opposite to the legally established public interests.
- (2) When an authorized official, with regard to the existing state of affairs, discovers or rates that a party or other participant in the procedure has grounds for the realization of some right or legal interest, official shall warn them about it.
- (3) If by virtue of the law obligations are imposed on parties and other participants in the procedure, shall apply measures determined by regulations, which are more favourable for them, if such measures are sufficient for the achievement of the objective of the law.

### ***The principle of Efficiency***

#### **Article 6**

Authorities that conduct procedure and make decisions in administrative matters shall provide for efficient and quality realization and protection of rights and legal interests of private persons, legal persons or other parties.

### ***The Principle of Truth***

#### **Article 7**

It is essential that all facts and circumstances of significance to make a lawful decision (decisive facts) are established accurately and wholly in the procedure.

### ***The Principle of Hearing the Party***

#### **Article 8**

- (1) Prior to passing a decision, the party shall be asked to make a statement on the facts and circumstances of significance for making a lawful decision.
- (2) The decision may be made without prior hearing of the party only in cases when this is

permitted by the law.

***The Principle of Assessment of Evidence***

**Article 9**

The decision on which facts are to be accepted as established shall be made by the authorised official according to his/her conviction, based on conscientious and careful assessment of each piece of evidence individually and all evidence together, as well as on the basis of the results of the entire procedure.

***The Principle of Independence in Decision Making***

**Article 10**

- (1) An authority shall conduct the procedure and make a decision independently, in the framework of authorization determined by the law or other regulations.
- (2) An authorized official shall establish facts and circumstances independently and apply regulations to a specific case on the basis of established facts and circumstances.

***The Obligation of the Party to Speak the Truth***

**Article 11**

- (1) During a procedure, the parties shall be obliged to speak the truth and honestly use their vested rights in accordance to this or other law, i.e. regulation of a self-government authority.
- (2) The competent authority shall prevent any abuse of rights that a party has in a procedure.

***The Principle of Two Instances (Right to Appeal)***

**Article 12**

- (1) The party shall be entitled to appeal against a decision made in the first instance.
- (2) It may only statutorily be prescribed that in certain administrative matters appeal is not allowed but only if the protection of rights and legal interests of the party, i.e. the protection of legality, is provided in another way.
- (3) An appeal against a decision made in the second instance shall not be permitted.

***The Principle of Cost-Efficiency of the Procedure***

**Article 13**

The procedure shall be conducted without delay and at the lowest possible costs for the party and other participants in the procedure, yet in the way that all evidence essential for an accurate and complete establishment of the facts and for making a lawful and correct decision be ensured.

***The Principle of Assistance to the Party***

**Article 14**

The competent authority conducting the procedure shall ensure that ignorance and illiteracy of the party and other participants in the procedure shall not be to the detriment of rights they are statutorily entitled to.

***The Use of Language and Script in the Procedure***

**Article 15**

- (1) The competent authority shall conduct the procedure using the language constitutionally determined as the official language in the Republic of Montenegro, whereas both the Cyrillic and the Latin script shall be equal. In municipalities, where national and ethnic groups form the majority or an important part, their languages and scripts shall also be in official use, in accordance with the Constitution and special law.
- (2) If the procedure is not conducted in the language of the party or other participants in the procedure who are citizens of the Republic of Montenegro or the Republic of Serbia, the authority shall provide translation of the procedure into their language by an interpreter, and the summons and other writings shall be delivered in their own language and script.
- (3) Parties and other participants in the procedure, who are not citizens of the Republic of Montenegro or the Republic of Serbia, shall be entitled to follow the procedure with assistance of an interpreter, as well as to use their own language in the procedure in the same way (through an interpreter).

**Chapter II  
JURISDICTION**

***1. Statutory and Territorial Jurisdiction***

**Article 16**

The statutory jurisdiction for decision-making in an administrative procedure shall be determined by virtue of regulations that govern a specific administrative field, i.e. in accordance with regulations determining jurisdiction of competent authorities.

**Article 17**

For decision-making in administrative matters in the first instance, statutory jurisdiction shall have the state authorities determined by the law or other regulations, and local self-government authorities determined by a local self-governing regulation.

**Article 18**

- (1) An authority may not take over a particular administrative matter which falls under the jurisdiction of another authority and decide on it by itself, unless this is provided by law, and under the conditions stipulated by that law.
- (2) If an authority, whose jurisdiction comprise the control over a first instance authority, establishes that the first instance authority fails to decide on administrative matters in due time, it shall admonish the head of the authority and set an additional deadline, in which

the first instance authority must decide on the administrative matter.

- (3) If on the expiry of the additional deadline from the paragraph 2 of this Article no decision had been made, the second instance authority may take over the decision-making in that matter, but only if it considers that otherwise threat to the life and health of people, the environment, or property of major value might arise.
- (4) The authority having jurisdiction to make a decision in a specific administrative field may, by virtue of its legal authority delegate the deciding to another authority.

#### **Article 19**

Statutory and territorial jurisdiction may not be changed by agreement of parties, agreement of authorities and parties, or by agreement between authorities, unless otherwise is provided by the law.

#### **Article 20**

(1) Territorial jurisdiction shall be determined:

- 1) in administrative matters relating to real property – according to the location thereof;
- 2) in administrative matters relating to affairs in the jurisdiction of a state authority, as well as to administrative matters relating to the activity of a business corporation or other form of performance of economic activity, or of another legal person – according to the location of the headquarters of the state authority, business corporation or an other form of performance of economic activity, or other legal person.
- 3) in administrative matters relating to the activity of a subsidiary of a business corporation or an other form of performance of economic activity, or other legal person, when it performs its activity outside its headquarters – according to the location of performance of the activity of that subsidiary of the business corporation or an other form of performance of economic activity or other legal person;
- 4) in administrative matters relating to the activity of an entrepreneur or an other private person, who professionally performs an activity, but has not the attribute of an entrepreneur – according to the location of the headquarters, i.e. according to the location where the activity is performed or should be performed;
- 5) in other administrative matters – according to the domicile of the party. When there is more than one party, the jurisdiction shall be determined with regard to the party who has signed the request. If the party's domicile is not in Serbia and Montenegro, the jurisdiction shall be determined with regard to his/her place of residence, and if the party has no residence either – according to his/her last domicile, i.e. residence in Serbia and Montenegro;
- 6) if the territorial jurisdiction can not be determined according to the provisions of items 1 to 4 of this paragraph, it shall be determined according to the location where the cause for the conducting of the procedure occurred.

- (2) In matters relating to a ship or aircraft, or when the cause for conducting the procedure had occurred on a ship or an aircraft, the territorial jurisdiction shall be determined according to the home port of the ship, i.e. home terminal of the aircraft.

#### **Article 21**

- (1) If, according to the provisions of Article 20 of this Law, two or more authorities possess territorial jurisdiction at the same time, the authority that first started the procedure, shall be competent. The authorities having territorial jurisdiction may agree who of them shall conduct the procedure.
- (2) Each authority having territorial competence shall on its respective territory perform those activities of the procedure that must not be delayed.

#### **Article 22**

An authority that has started a procedure as territorially competent, shall retain the jurisdiction even in the case that during the procedure, circumstances occur according to which another authority should be territorially competent. The authority that has started the procedure may cede the case to the authority which has become territorially competent according to the new circumstances, if the procedure has been significantly developed thereby, particularly for the party involved.

#### **Article 23**

- (1) An authority shall ex officio control its statutory and territorial jurisdiction during the entire procedure.
- (2) If an authority finds that it is not competent for decision-making in a certain administrative matter, it shall proceed in the manner stipulated in Article 55, paragraphs 3 and 4 of this Law.
- (3) If a non-competent authority had performed some parts of the procedure, the competent authority, to which the administrative matter has been ceded, shall estimate whether to repeat the action or not.

### ***2. Parties with Diplomatic Immunity***

#### **Article 24**

- (1) With respect to jurisdiction of an authority in matters in which the party is a foreigner who enjoys diplomatic immunity, a foreign country or an international organization, the provisions of international law shall apply.
- (2) In the case of doubt in the existence and the scope of diplomatic immunity, the ministry competent for foreign affairs shall give a clarification.
- (3) Official proceedings concerning persons enjoying diplomatic immunity shall be performed through the ministry competent for foreign affairs.

### ***3. Territorial Limitation of Jurisdiction***

#### **Article 25**

- (1) An authority shall perform official proceedings within its territory.
- (2) If delay may cause a danger, and the official proceeding should be performed outside the authority's territory, the authority may perform the proceeding outside its territory. It shall forthwith notify the authority, on whose territory it had performed the proceeding.
- (3) Official proceedings in buildings and other premises used by the Armed forces of Serbia and Montenegro shall be performed on prior notification to the competent military officer.
- (4) Official proceedings performed in an extraterritorial locality shall be performed through the ministry competent for foreign affairs.

### ***4. Conflict of Jurisdiction***

#### **Article 26**

- (1) The conflict of jurisdiction between administrative and judicial authorities, the conflict of jurisdiction between these authorities and local self-government authorities, and the conflict of jurisdiction between local self-government authorities, shall be decided by the Constitutional Court of the Republic of Montenegro.
- (2) The Government of the Republic of Montenegro (hereinafter: the Government) shall resolve conflicts of jurisdiction between ministries, administrative authorities, ministries and administrative authorities, and ministries and administrative authorities and authorities performing affairs of the state administration.

#### **Article 27**

- (1) When two authorities declare having jurisdiction or not having jurisdiction to decide in the same administrative matter, the proposal for resolution of the conflict of jurisdiction shall be submitted by the authority having last decided on its jurisdiction, while it may be submitted by the party as well.
- (2) The authority deciding on the conflict of jurisdiction shall simultaneously nullify the decision taken in the administrative matter by the non-competent authority, i.e. it shall nullify the conclusion by which the competent authority declared itself as not competent and deliver the case to the competent authority.
- (3) The party may not file a special appeal nor conduct an administrative dispute against the decision determining the conflict of competence.
- (4) The provision of Article 21, paragraph 2 of this Law, shall apply accordingly in the case of conflict of jurisdiction.

## **5. Legal Assistance**

### **Article 28**

- (1) For the performance of certain actions in the procedure, which have to be undertaken outside the territory of the competent authority this authority shall make a request to the competent authority, on whose territory the action is to be undertaken.
- (2) In the case that the rendering of legal assistance between state authorities and local self-government authorities requires particular expenses, the legal assistance shall be rendered, if the authority seeking the assistance covers the necessary expenses.
- (3) The authority competent to make a decision in an administrative matter may, for the sake of easier and faster performance of the proceeding, or avoidance of unnecessary expenses, entrust the performance of a certain action in the procedure to another authority authorized to undertake such a proceeding.

### **Article 29**

- (1) The authorities shall be obliged to render each other legal assistance in the administrative procedure. That assistance shall be applied for by an official request.
- (2) The requested authority mentioned in paragraph 1 of this Article shall act upon the request without delay, and not later than 30 days from the day of receipt of the official request.
- (3) Legal assistance for the execution of certain actions in the procedure may be requested from the court in accordance with specific regulations. Exceptionally, the authority may, in order to make a decision in the administrative matters, seek from the court the delivery of documents necessary for the conducting the administrative procedure. The court shall obey this request, provided it does not obstruct the court procedure. The court may determine the deadline in which the documents shall be returned.
- (4) For legal assistance in relation with international authorities, the provisions of international agreements shall apply, and if there are no such agreements, the principle of reciprocity shall apply. In the case of doubt in the existence of reciprocity, the ministry competent for foreign affairs shall give instructions.
- (5) The authorities shall render legal assistance to international authorities in a manner set forth by the law. An authority shall refuse legal assistance, if the performance of an action is requested, which is contrary to the law and order. An action that is the matter of a request of an international authority may as well be performed in the manner requested by the international authority, if such proceeding is not in contrary to the public order.
- (6) If the possibility of direct communication with international authorities is not provided by international agreements, the authorities shall communicate with international authorities through the ministry competent for foreign affairs.

## **6. Exemption**

### **Article 30**

An official deciding in administrative matters or performing certain actions in the procedure shall be exempted in the following cases:

- 1) if he/she is a party, co-proxy, respectively co-tributary, witness, assessor, attorney or legal agent of the party in the case, in which the procedure is conducted;
- 2) if his/her relationship to the party, his agent or attorney is in direct blood kinship or side-line kinship up to the fourth degree inclusive, or if he/she is spouse or partner, or in in-law relationship up to the second degree inclusive, even if the matrimony has ceased;
- 3) if his/her relationship with the party, the agent or attorney of the party is one of guardianship, adoptive parent, adoptive child or foster parent;
- 4) if he/she had participated in the conducting of the procedure or in the passing of the decision in the first instance procedure.

### **Article 31**

An official, who is to make a decision in a certain administrative matter, or who is to perform a certain action in the procedure, shall discontinue any further work on that case and notify the authority competent for deciding on exemption, as soon as he/she discovers that one of the grounds for exemption from Article 30 of this Law exists. If the official estimates that there are other circumstances justifying his/her exemption, he/she shall inform thereon the same authority, without interrupting the work.

### **Article 32**

- (1) A party may demand the exemption of an official when grounds set forth in Article 30 of this Law exist, as well as when other circumstances exist which create doubt in his/her impartiality. The party shall state in his/her request the circumstances, on the account of which he/she considers that grounds for exemption exist.
- (2) An official, the exemption of whom the party has demanded for any of the reasons set forth in Article 30 of this Law, may not perform any actions in the procedure pending the taking of the conclusion on this demand, except for those that must not be delayed.

### **Article 33**

- (1) The exemption of an official shall be decided on by the minister, i.e. head of an authority, institution or other legal person.
- (2) The exemption of a minister, i.e. head of an administrative authority, shall be decided by the Government.
- (3) The exemption of a head of a local self-government authority shall be decided by the mayor.
- (4) The exemption of a head of an institution or other legal person, who exercises public authority, shall be decided on by the authority performing control over their operation.
- (5) Exemption shall be decided by a conclusion.

**Article 34**

- (1) In the conclusion on exemption another official shall be assigned to make a decision in the administrative matter, i.e. to perform certain actions in the procedure relating to the case in which the exemption has been determined.
- (2) Special appeal against the conclusion determining the exemption shall not be permitted.

**Article 35**

- (1) The provisions of this Law regulating exemption shall apply accordingly to members of collegiate bodies.
- (2) The conclusion on exemption of a member of a collegiate authority shall be made by that authority.

**Article 36**

- (1) The provisions of this Law governing exemption shall apply accordingly to the record clerk as well.
- (2) The conclusion on exemption of the record clerk shall be made by the official conducting the procedure.

**Chapter III**

**THE PARTY TO THE PROCEDURE AND THEIR REPRESENTATION**

***1. The Party to the procedure***

**Article 37**

A party is a person, on whose request a procedure has been started, or against whom a procedure has been started, or who is entitled to participate in the procedure for the protection of his/her rights or legal interests.

**Article 38**

- (1) A party to the procedure may be any private or legal person.
- (2) A state authority, organization, settlement, group of persons and others who do not have the attribute of a legal person may be parties, if they are entitled to be holders of rights and obligations or legal interests on which the procedure has been started.

**Article 39**

- (1) The right to participate in the procedure shall have every person who declares a legal interest. It is considered that a legal interest was declared, if a person claims to be joining the procedure for the protection of his/her rights or legal interest (interested person).

- (2) The legal interest is an immediate personal interest based on the law or other regulation.
- (3) A person from paragraph 1 of this Article shall have the same rights and obligations in the procedure as other parties, unless otherwise provided by the law.
- (4) A person requesting participation in the procedure shall precisely state in the petition the nature of his/her legal interest.

#### **Article 40**

- (1) The State Prosecutor and other state authorities, being legally empowered to represent the public interest in a procedure, shall have the rights and obligations of a party, in the framework of these powers.
- (2) Authorities mentioned in paragraph 1 of this Article may not have broader powers than the parties, unless such powers are vested to them by the law.

## ***2. Procedural Capacity and the Legal Agent***

#### **Article 41**

- (1) Completely legally capable party may perform actions in the procedure itself (procedural capacity).
- (2) Actions in the procedure on behalf of a person lacking procedural capacity shall be performed by his/her legal representative. The legal representative shall be determined in accordance with the law or by an act of the competent state authority.
- (3) A legal person shall perform actions in the procedure through its legal representative, respectively authorized representative who shall be assigned by virtue of a general act of that legal person, if not determined by an act of the competent state authority.
- (4) A state authority shall perform actions in the procedure through a statutorily authorized representative; an organization that has not the capacity of a legal person – through a person determined according to a general act of the organization, while a settlement, group of persons and others who have not the capacity of a legal person – through a person authorized by them, unless something else is determined by a specific regulation.
- (5) When an authority conducting a procedure ascertains that the legal representative of a person under custodianship fails to demonstrate due attention in the procuration, it shall notify the custody authority thereof.

#### **Article 42**

- (1) During the entire procedure, the authority shall ex officio overview whether the person appearing as a party can be a party to the procedure and whether the party is represented by its legal representative, i.e. an authorized representative.
- (2) If during the procedure the party deceases, respectively if the legal person ceases, the procedure may be cancelled or continued, depending on the character of the administrative matter that is the object of the procedure. If, due to the character of affairs the procedure

can not be continued, the authority shall terminate the procedure by a conclusion, against which a special appeal is permitted.

### ***3. The Temporary Representative***

#### **Article 43**

- (1) If a party lacking procedural capacity has no legal representative, or if it is required to undertake a proceeding against a person whose domicile, i.e. residence is unknown, and who has no attorney, the authority conducting the procedure shall assign a temporary representative for that party, if the urgency of the cause requires so and the procedure needs to be conducted. This authority shall forthwith notify the custody authority, and if the temporary representative was assigned to a person whose domicile, i.e. residence is unknown, it shall publish its conclusion on the notice board of the authority, or in the official journal.
- (2) If a legal person, organization, settlement, group of persons and others who have not the capacity of a legal person, have neither a legal representative, i.e. authorized representative nor an attorney, the authority conducting the procedure shall, under the stipulations of paragraph 1 of this Article, assign a temporary representative for that party and shall forthwith inform it thereof. A temporary representative for a legal person is usually assigned from among officials within that legal person.
- (3) The temporary agent shall also be assigned in the manner set out in paragraphs 1 and 2 of this Article when an urgent action needs to be performed, and when it is not possible to timely summon the party, respectively his legal agent, authorized representative or attorney. The party, legal representative, authorized representative or attorney shall forthwith be notified thereof.
- (4) A person that is assigned as temporary representative shall be liable to assume the procuration, while the procuration may be refused only for reasons stipulated by specific regulations. The temporary representative shall participate only in the procedure he/she is explicitly assigned for, and only until the legal agent or authorized representative, i.e. the party itself or its attorney appear.

### ***4. The Common Representative, i.e. Common Attorney***

#### **Article 44**

- (1) Two or several parties may, unless otherwise provided by a specific regulation, jointly come forward in the same case. In that case they shall indicate which of them will act as their common representative, or assign a common attorney.
- (2) The authority conducting the procedure may, unless prohibited by a specific regulation, determine by a conclusion for the parties, participating in the procedure with the same claims, to indicate in a specified period who among them will represent them, or to appoint a common attorney. If the parties fail to act on this conclusion, the legal representative, authorized representative or attorney may be assigned by the authority conducting the procedure, in which case this common representative, i.e. common attorney retains this capacity until the parties assign another. The parties are entitled to file a special appeal against such a conclusion, which shall not defer the execution thereof.

- (3) Even in the case of determination of a common representative, i.e. common attorney, each party shall retain the right to act as a party to the procedure, to give statements, as well as to independently file appeal and use other legal remedies.

## **5. The Attorney**

### **Article 45**

- (1) The party, or his/her legal representative, may appoint an attorney who shall procure the party in the procedure, except in proceedings which require that the party itself gives statements.
- (2) Proceedings in the procedure, performed by the attorney within the capacity of attorney, shall have the same legal effect as if undertaken by the party itself, i.e. his/her legal representative.
- (3) Notwithstanding the attorney, the party itself may give statements, while they may as well be directly requested from the party.
- (4) A party, which is present when his attorney gives a verbal statement, may immediately after the given statement change or revoke the statement of his attorney. If in the written or verbal statement relating to facts there is an incongruity between the statements of the party and his/her attorney, the authority conducting the procedure shall consider both statements in the sense of Article 9 of this Law.

### **Article 46**

- (1) The attorney may be any person with full legal capacity, except for persons engaged in quasi notary.
- (2) If the attorney is a person engaged in quasi notary, the authority shall prevent him/her further procuration and forthwith inform the party and the competent state prosecutor thereof.
- (3) A special appeal against the conclusion on prevention of procuration shall be permitted, yet it shall not defer the execution thereof.

### **Article 47**

- (1) The power of attorney may be given in writing or read on the record. If during the procedure no records are taken, the verbal authorization shall be recorded in the documents of the case.
- (2) A party that is illiterate or not capable to sign documents shall put a finger print on the written authorization in place of a signature. If the power of attorney is issued to a person that is not an attorney, it shall be certified by the competent authority.
- (3) Exceptionally, the authorised official may permit that a family member of the party or a member of his/her household or a person that is employed with him/her, perform as his/her representative a certain proceeding without power of attorney, if there is no doubt

concerning existence and the scope of the power of attorney. If such a person makes a claim for commencement of a procedure or gives a statement opposite to the party's earlier statement, he/she shall be called upon to subsequently show the power of attorney within a specified period.

#### **Article 48**

- (1) The power of attorney may be given in form of a private document.
- (2) If the power of attorney was given in form of a private document, and it occurs that there are doubts in its authenticity, the submission of a certified power of attorney may be ordered.
- (3) The authenticity of a power of attorney shall be examined ex officio, and the deficiencies of the written power of attorney shall be eliminated in pursuance of the provisions of Article 57 of this Law, whereat the official conducting the procedure may allow the attorney with the deficient power of attorney to perform urgent actions in the procedure.

#### **Article 49**

- (1) The scope of the power of attorney shall correlate to the contents of the power of attorney. The power of attorney may be issued for the entire procedure or only for individual actions, and it may be limited with regard to time.
- (2) The power of attorney shall not be terminated with the death of the party, loss of his/her procedural capacity or with the replacement of his/her legal representative. However, the legal successor of the party, i.e. his/her new legal representative may revoke the previous power of attorney.
- (3) Issues relating to power of attorney, which are not regulated by the provisions of this Law, shall be regulated accordingly by the provisions regulating the litigation procedure.

#### **Article 50**

- (1) If the attorney is an attorney, and the power of attorney was issued for the entire procedure, he may perform all actions in the procedure, except filing of extraordinary legal remedies, for what a specific power of attorney is required.
- (2) If the attorney represents a party that deceased during the course of the procedure, and his/her legal successors are joining the procedure, the attorney shall obtain a confirmation of the power of attorney by all legal successors.
- (3) If a party to the procedure is represented by a person that is not an attorney, while a general power of attorney was issued, such an attorney may perform all actions in the procedure, however, he/she may not withdraw a demand, negotiate a settlement, transfer the given power of attorney to a third person, or file extraordinary legal remedies.

### **Article 51**

The provisions of this Law relating to the parties shall be applied accordingly to their legal representatives, authorized representatives, attorneys, temporary representatives, common representatives and common attorneys.

### **Article 52**

- (1) In administrative matters, for which the proficient knowledge of issues related to the subject of the procedure is required, the party shall be allowed to bring an expert instead of a person that will give him/her counsel and advice (expert aide). This person shall not act for the party.
- (2) The party may not bring as expert aide a person lacking legal capacity or one that is engaged in quasi notary.

## **Chapter IV**

### **COMMUNICATION BETWEEN AUTHORITIES AND PARTIES**

#### ***1. Petition Requests***

#### **Article 53**

- (1) Petition requests are claims, motions, reports, petitions, appeals, objections and other notification by means of which the parties refer to the authorities.
- (2) Petition requests shall generally be submitted directly or sent by post, in writing or in electronic form, or they shall be put on the record, while they may, if not otherwise determined, be declared by telegraph, or telefax.
- (3) The manner and procedure of submission of an electronic petition request or a petition request that is submitted by e-mail, electronic delivery, shall be regulated by the Ministry competent for the state administration.

#### **Article 54**

A petition request shall be submitted to the authority competent for the reception of petition requests in a sufficient number of copies, and it may be submitted every working day during working hours.

#### **Article 55**

- (1) The authority competent for the receipt of petition requests shall accept the petition request being delivered to it, i.e. take a petition request, which is communicated orally, into the record.
- (2) An officer who receives a petition request shall, upon a verbal request of the submitter, confirm the receipt of the petition request. No fees shall be charged for such a confirmation.
- (3) If an authority is not competent for the receipt of a petition requests, the officer within that

authority shall notify the submitter thereof and refer him/her to the authority competent for reception. If the submitter nevertheless insists that his/her petition request be accepted, the officer shall accept such a petition request. If the authority finds not to be competent to act upon such a petition request, it shall bring a conclusion, by which it will reject the petition request on account of non-competence.

- (4) When an authority receives per post a petition request for the receipt of which it is not competent, and there is no doubt about which authority is competent for the receipt thereof, it shall send the petition request forthwith to the competent authority, respectively to the court and notify the party thereof. In the case that the authority having received a petition request can not determine which authority is competent to act thereon, it shall forthwith pass a conclusion, by which it rejects the petition request on account of non-competence and immediately deliver the conclusion to the party.
- (5) Special appeal shall be permitted against the conclusion passed in compliance with the provisions of paragraphs 3 and 4 of this Article.
- (6) If an authority receives per post a complaint for the commencement of an administrative dispute, it shall forthwith be delivered to the competent court, on which it shall notify the applicant of the complaint.

#### **Article 56**

- (1) The petition request must be intelligible and, in order that it can be treated properly, it shall include in particular the following: the designation of the authority it is addressed to, the case it refers to, a request, i.e. motion; who the representative or attorney is, if there is any, as well as the first name, family name and domicile, respectively residence and address, or company and headquarters of the submitter, i.e. representative or attorney.
- (2) The applicant shall personally sign the petition request. Exceptionally, the petition request may be signed on behalf of the submitter by his/her spouse, one of his/her parents, the son or daughter, or the attorney who drew up the petition request by virtue of the party's authorization. The person having signed the petition request shall put his/her name and address on it.
- (3) It shall be considered that the electronic petition request is accurate, if it was signed with an electronic signature with a qualified verification.
- (4) A petition request that is submitted by electronic delivery or by telegraph, need not meet all the requirements from paragraph 1 of this Article, unless otherwise determined by law.
- (5) If the submitter is illiterate or not capable to sign, request shall be signed by a literate person, who shall undersign his/her name as well and specify his/her address.

#### **Article 57**

- (1) If the petition request contains some formal deficiency that impedes the acting upon the petition request, or if it is unintelligible or incomplete, the authority having received such a petition request shall, not later than 8 days from the day of receipt thereof, call upon the submitter to eliminate the deficiencies and determine a deadline for the submitter to do so.

This can be communicated to the submitter by telephone or verbally, if the submitter happens to be at the authority, which is informing that the petition request contains deficiencies. The authority shall make a note on the notification onto the document.

- (2) If the submitter eliminates the deficiencies in the specified period, it shall be considered that the petition request has been submitted on the day it was complemented. If the submitter should not eliminate the deficiencies in the specified period, thus it can not be acted upon the petition request due to that, the authority shall reject such a petition request by a conclusion. The submitter shall specifically be admonished of this consequence in the invitation for correction of the petition request. Special appeal against such a conclusion shall be permitted.
- (3) When the petition request has been sent by telegraph, telefax or in electronic form, and there is a doubt whether the petition request had been submitted by the person whose name is indicated on the telegraphed petition request, respectively fax or electronic petition request, the authority shall start the procedure for the establishment of these facts, and if they are not established, respectively if the deficiencies are not eliminated, it shall proceed in the manner laid down in paragraph 2 of this Article. An official note shall be made on this. Special appeal against the conclusion of the authority, by which the petition request was rejected, shall be permitted.

#### **Article 58**

If a petition request contains a number of claims that have to be determined separately, the authority having received the petition request shall take into consideration those claims for determination of which it is competent and proceed with the remaining claims in terms of Article 55, paragraph 4 of this Law.

### ***2. The Summoning***

#### **Article 59**

- (1) The authority conducting a procedure shall be authorized to summon a person whose presence in the procedure is necessary, and who resides on its territory. Generally, the summoning may not be decided upon for the delivery of decisions, conclusions, or announcements that can be sent by post or in another way more convenient for the person the notice is to be delivered to.
- (2) Summons for an oral hearing may be sent to a person who is outside the territory of the competent authority, if the procedure is accelerated or facilitated thereby and the arrival does not incur major expenses or a major waste of time for the summoned person.
- (3) The summoning shall be carried out by a written summons, if specific regulations do not define a different form of summoning.

#### **Article 60**

- (1) In a written summons it is required to specify the name of the authority which issued the summons, the name, surname and address of the person summoned, the place, the day, and when possible, the time the summoned is due to appear, the case for which he/she is summoned and in what capacity (as a party, witness, assessor, etc.), and which ancillary

resources and evidence the summoned has to obtain, respectively produce. The summons shall state whether the summoned person is to appear in person or whether he/she may send an attorney who will act for him/her, and he/she shall be notified that in the case of prevention to act on the summons he/she shall inform the authority which has issued the summons. The summoned shall also be notified of the consequences of failure to act on the summons or to inform that he/she is prevented to appear.

- (2) In the summons to an oral hearing the party may be called upon to submit written and other evidence, and he/she may be informed that he/she may bring witnesses he/she intends to refer to.
- (3) When the character of affairs allows so, it may be left at the discretion of the summoned person to deliver a necessary written statement within a specified period, instead of appearing in person.

#### **Article 61**

- (1) On the occasion of summoning, the authority shall consider that the person, whose presence is required, be summoned to appear at a time that least interferes the performance of his/her regular work.
- (2) Nobody shall be summoned to appear during the night, except in the case of urgent and emergency measures.

#### **Article 62**

- (1) The summoned person has the obligation to act according to the summons.
- (2) If the summoned person has been prevented to appear due to illness or another justifiable cause, he/she shall forthwith, after receipt of the summons, inform thereof the authority that issued the summons, and if the cause for the absence occurred later – immediately upon the discovery of the cause.
- (3) If the person having been obtained the summons does not act thereon and fail to justify the absence, he/she may be brought in by force, and additionally be fined up to 50.00 EURO. These measures shall be applied only if indicated so in the summons. If due to the default of the summoned person expenses incur in the procedure, it may be determined that these expenses be borne by the defaulting party. The conclusion on the apprehension, the pronouncement of the fine, and the payment of expenses, shall be passed by the official conducting the procedure, in agreement with the officer authorized for deciding in the administrative matter, and at the petitioned authority – in agreement with the head of that authority, respectively with the officer authorized for deciding in similar administrative matters. Special appeal against this conclusion shall be allowed.
- (4) If the default to appear was committed by a member of the military or the police, the authority shall refer to the competent headquarters, i.e. the competent authority, with the request to bring him/her, while he may be fined according to paragraph 3 of this Article, respectively he may be ordered to bear the expenses caused by the default.

### **3. The Record**

#### **Article 63**

- (1) A record shall be drawn up on the oral hearing or another major action in the procedure, as well as on significant verbal statements of the parties or third persons in the procedure.
- (2) A record shall generally not be drawn up on less significant actions and statements of parties and third persons that have no major impact on the decision making of the administrative matter, on the line of conduct during the procedure, on announcements, official remarks, verbal instructions and findings, as well as on circumstances relating only to the internal operation of the authority where the procedure is conducted, however a remark shall be entered into the document and ratified by the official who made the remark, along with the date. Neither is it necessary to draw up a record on verbal requests of a party which are decided on in a summary procedure and which are granted, yet such requests may be noted in an appropriate manner.

#### **Article 64**

- (1) The following shall be entered into the record: the name of the authority which performs the proceeding, the day and time when the proceeding is performed, the case in which it is performed and the names of the officials in charge, of present parties and their agents, attorneys or representatives.
- (2) The record shall contain, precisely and briefly, the course and the content of the performed proceedings in the procedure, as well as the given statements. Thereby, the record shall be restricted to what relates to the very administrative matter which is the object of the procedure. All documents that have been used for whichever purpose in the oral hearing shall be entered into the record. These documents shall, if necessary, be enclosed in the record.
- (3) Statements of parties, witnesses, assessors and other persons who participate in the procedure, which are of significance to the decision making in the administrative matter, shall be entered in the record as accurately as possible and, if necessary, in their own words. All conclusions brought during the execution of a proceeding shall also be entered into the record.
- (4) If the hearing is performed by the agency of an interpreter, it shall be indicated which language the interrogated spoke and who the interpreter was.
- (5) A record shall be conducted during the performance of an official proceeding. If a proceeding can not be completed on the same day, each day separately it shall be entered into the record what has been accomplished on the particular day and it shall be duly signed.
- (6) If the proceeding, on which a record is drawn up, could not be performed without interruption, it shall be entered in the record that there had been interruptions.
- (7) If plans, outlines, drawings, photographs and alike have been elaborated or obtained during the proceeding, they shall be verified and attached to the record.
- (8) In certain matters the record may be made in form of a book or other record instrument.

- (9) A record made in form of a book shall be handed to the party to give remarks on the record at the latest within three days from the day of delivery thereof. If in the specified period the party does not give any remark on the record, it shall be considered that there are no remarks.
- (10) The record may be dictated to an electronic recorder, while a written version of the record shall be drawn up within three days and delivered to the parties to give remarks on the record at the latest within three days. If the parties fail to give remarks on the record within the specified period, it shall be considered that they have no remarks.

#### **Article 65**

- (1) The record shall be conducted accurately and nothing shall be deleted from it. Passages that have been struck through before the conclusion of the record shall remain legible and verified by the signature of the authorised official.
- (2) Nothing shall be added or revised in an already signed record. Complements to the already concluded record shall be entered in an annex to the record.

#### **Article 66**

- (1) Prior to its conclusion, the record shall be read to the parties and the other persons participating in the procedure. These persons shall have the right to examine the record themselves and give their remarks. At the end of the record it shall be stated that it has been read and that no remarks have been made or, if there are remarks, their content shall be entered concisely. Thereafter, the record shall be signed by the person who has participated in the proceeding, and finally it shall be verified by the authorised official, as well as by the record clerk – if there had been any.
- (2) If the record contains the hearing of several persons, each of them shall sign that part of the record, where his/her statement has been recorded.
- (3) If confrontations have been made, the part of the record relating thereto shall be signed by the persons having been confronted.
- (4) If the record consists of a number of pages, they shall be paginated with ordinal numbers. The bottom of each page shall be verified by the signature of the authorised official and of the person, whose statement has been entered at the end of the page.
- (5) Complements to an already concluded record shall be signed and verified again.
- (6) If a person that is to sign the record is illiterate or incapacitated to write, the record shall be signed by a literate person. This may neither be the official in charge of the action in the procedure nor the record clerk.
- (7) If a person refuses to sign the record or departs before the conclusion thereof, this shall be entered into the record along with the specification of the reason for which the signature was deprived.

**Article 67**

- (1) A record drawn up in accordance with the provisions of Article 64 of this Law is a public document. The record shall serve as evidence on the course and the content of an action in a procedure and of statements given, except for those parts of the record on which the interrogated persons made the remark that they have not been drawn up accurately.
- (2) It is permitted to substantiate the inaccuracy of the record.

**Article 68**

- (1) In case that a collegiate authority decides in the procedure, a special record shall be drawn up on the deliberation and the voting. When in a procedure on an appeal, a unanimous decision has been reached, it is not necessary to draw up a record on the deliberation and the voting, yet a remark may be made on it in the document.
- (2) Apart from data on the personal composition of the collegiate authority, the record on the deliberation and the voting shall contain the designation of the case dealt with and a brief summary of what has been determined, as well as extracted opinions, if there have been any. This record shall be signed by the chairperson and the record clerk.

**4. Review of Documents and Notification on the Course of the Procedure**

**Article 69**

- (1) The parties shall be entitled to review the documents of the case and to transcribe, respectively copy necessary documents at their own expense. The review and the transcription, respectively copying of documents shall be carried out under the supervision of an authorized official.
- (2) The right to review documents and to transcribe, respectively copy certain documents at his/her own expense shall have any person provided he/she proves his/her legal interest plausible.
- (3) The request to view and transcribe, respectively copy documents may be submitted verbally. The authority may require from the person mentioned in paragraph 2 of this Article to justify, in writing or verbally into the record, the existence of his/her legal interest. The authority shall decide on the request within 3 days from the submission of the request.
- (4) The following documents may neither be viewed nor transcribed, respectively copied: the record on the deliberation and the voting, official reports and draft administrative acts, as well as documents that are filed as confidential, if the purpose of the procedure might thereby be thwarted, or if it is in opposition to the public interest, or the justified interest of one of the parties or a third person.
- (5) A party and any third person who can prove his/her legal interest in the procedure, as well as interested state authorities, shall have the right to be notified on the course of the procedure.
- (6) A special appeal against the conclusion on the refusal of the request from paragraphs 1 to 5 of this Article shall be permitted even when the conclusion had not been issued in

writing. The appeal may be declared immediately after the notification and at the latest within 24 hours after the notification has been made. The appeal shall be decided on within 48 hours from the moment of the filing of the appeal.

## **Chapter V DELIVERY**

### ***1. Manner of Delivery***

#### **Article 70**

- (1) The delivery of legal documents (summons, administrative acts, conclusions and other official documents) shall generally be carried out in the way that the writing be consigned to the person it is intended for.
- (2) The delivery shall be carried out by post, telefax, electronically, or it shall be made by an authorised official or by a person that is registered for the physical or electronic delivery. The addressee may be summoned for the receipt thereof only exceptionally, when the character or significance of the document to be served requires so.
- (3) The manner of delivery shall be determined by the authority whose document is delivered.

#### **Article 71**

- (1) The delivery shall be made on working days, from 07:00 – 20:00 hours.
- (2) The authority whose document is to be delivered, may for particularly important reasons determine that the delivery be made even on a Sunday or on a holiday, as well as during the night, if it is imperatively urgent.
- (3) The delivery by post may as well be made on Sundays and holidays.

#### **Article 72**

- (1) The delivery shall generally be carried out in the apartment, office or at the workplace of the addressee, and to an attorney – in his/her office.
- (2) The delivery may as well be carried out outside the premises mentioned in paragraph 1 of this Article, if the addressee accepts to receive the document that is to be delivered, and if there are no such premises, this delivery to that person may be made wherever he/she is found.

### ***2. Substituted Service***

#### **Article 73**

- (1) In case that the addressee shall be not found in his/her apartment, the delivery shall be made by handing the document to some adult member of his/her household.
- (2) If the delivery is made at the workplace of the addressee, and this person is not found there, the delivery shall be made to a person employed at the same place, if he/she agrees

to accept the document. The delivery to an attorney may as well be made by handing the document to a person employed in the attorney's office.

- (3) The delivery according to paragraphs 1 and 2 of this Article may not be made to a person that is involved in the same procedure with an opponent interest.

#### **Article 74**

- (1) If it is ascertained that the addressee is absent and that the persons mentioned in Article 73 of this Law can not deliver the document on time to him/her, the document shall be returned to the authority that had issued it, with an annotation where the absent addressee is.
- (2) If it is not possible to determine the domicile, i.e. residence of an addressee, the authority which has issued the document shall assign him/her a temporary representative in accordance with Article 43 of this Law and deliver the document to him/her.

#### **Article 75**

- (1) If it is not possible to carry out the delivery in the manner specified in Article 73 of this Law, and it was not ascertained that the addressee is absent, the messenger shall deliver the document to the relevant authority on whose territory the domicile, respectively residence of the addressee is, or to the post office in his/her domicile, if the delivery is carried out by post. The messenger shall attach a written notification on where the document can be found to the door of the apartment, office or workplace of the addressee and the delivery shall thereby be considered as carried out. On the notification and on the very document that was to be delivered the messenger shall make a remark on the reason for such delivery, put the date when the notification was attached to the door, and sign it.
- (2) The authority that ordered the delivery shall be informed on the delivery carried out in the manner specified in paragraph 1 of this Article.

### ***3. Obligatory Personal Delivery***

#### **Article 76**

- (1) The delivery shall be made personally to the person the document is intended for when the document is a decision, conclusion or other document, from the delivery of which a deadline begins that can not be extended, when such delivery was determined by an other regulation, or when particularly determined by the authority that ordered the delivery. It shall be considered that personal delivery has been carried out when delivered on the attorney or when handed to a person employed in the attorney's office.
- (2) In case that the person who is to be delivered on is not found in his/her apartment, office or workplace, or no employee is found in the attorney's office, while there are no information indicating that the addressee is absent, the messenger shall return the document to the post office, respectively to the sending authority, if the document is not delivered by post. A written notification shall be left in the mailbox or attached at the door of the apartment, office, workroom or at another suitable place, as to where the document is from that moment on, and that it is to be picked up within fifteen days.

- (3) The messenger shall sign the notification from paragraph 2 of this Article, and indicate on the document he returns to the post office, respectively to the authority, where he/she left the notification.
- (4) The delivery shall be considered as carried out on the day the addressee, it was intended for, accepts the document. If the addressee fails to accept up the document within 15 days from the day of leaving the notification, the delivery shall be considered as carried out with the expiration of the fifteenth day from the day of leaving the notification.
- (5) In case that it is ascertained that the person from paragraph 2 is absent, the messenger shall return the document to the authority which had issued it and which shall determine the delivery again, upon knowledge that the addressee has returned and at the latest within 30 days. After expiration of this period the document shall be delivered to the proxy for reception of documents.
- (6) Any person that intends to be absent for more than thirty days shall notify the authority conducting the procedure on the name, family name and address of his/her proxy for reception of documents (Article 79).
- (7) If the proxy from the paragraph 6 of this Article has not been assigned, the delivery shall again be carried out in the manner set forth in paragraphs 2 and 4 of this Article.
- (8) The addressee to whom the delivery is made in the manner set forth in this Article may substantiate an absence longer than thirty days, if he quotes justifiable reasons for which he/she was not able to accept the documents or to assign a proxy for reception of documents. Provided that he can prove a justifiable absence, the addressee shall be entitled to request restitution.

#### **Article 77**

- (1) Electronic delivery shall be carried out by way of the information system of the state authority, respectively of the legal or private person who performs the electronic delivery of documents as the main activity, if licensed by the ministry competent for state administration.
- (2) The system specified in the paragraph 1 of this Article shall automatically send to the addressee an electronic notification stating that there is a document in the information system and determine a period of 15 days within which the document is to be accepted.
- (3) The addressee may accept the document from the system specified in paragraph 1 of this Article with a qualified certificate by way of which he/she shall prove his/her electronic signature and sign the electronic delivery receipt with this signature.
- (4) The delivery specified in paragraph 2 of this Article shall be considered as carried out on the day the addressee accepts the document from the information system. In case that the addressee fails to accept the document within 15 days from the day of transmission of the electronic notification, it shall be considered that the delivery had been carried out upon the expiration of the fifteenth day from the transmission of the notification. On expiration of the fifteenth day the information system shall delete the document, while it shall send to the addressee an electronic notification stating that the document has been deleted from

the information system and that it can be accepted at the authority that had issued it.

- (5) The information system for delivery and notification shall notify the authority, which issued the document, on the delivery thereof by means of an electronic delivery receipt.

#### **4. Specific Cases of Delivery**

##### **1) Substituted Delivery to the Legal Representative and Attorney**

###### **Article 78**

- (1) The delivery to the legal representative or attorney, if the party has one, shall be carried out in the manner set forth in Articles 70 to 76 of this Law.
- (2) In case that several parties have a common legal representative or attorney in the same case, the delivery to all of them shall be made to this legal representative, i.e. attorney. If a party has several attorneys, it shall suffice to make the delivery to only one of them.

##### **2) Delivery to the Proxy for Reception of Documents**

###### **Article 79**

- (1) The party may empower a certain person to whom all deliveries for him/her are to be made. When the party notifies the authority conducting the procedure on this authorization, that authority shall make all deliveries to that proxy (proxy for reception of documents).
- (2) The proxy for reception of documents shall forthwith send every document to the party.
- (3) In case that the direct delivery to the party, legal representative or attorney should significantly delay the procedure, the authorized official may order the party, for a specific case and in a specific deadline, to assign a proxy for the reception of documents in the seat of the authority. If the party should not act upon this order, the authority may proceed according to Article 43 of this Law.
- (4) If the party or his/her legal representative are abroad, and there is no proxy in Montenegro, on the occasion of delivery of the first document they shall be called upon to assign in a specified period an attorney or proxy for reception of documents, and they shall be notified that, if they fail to assign an attorney in the specified period, they shall, ex officio, be assigned a proxy for reception of documents, respectively a temporary representative.
- (5) Delivering a document to the proxy for reception of documents, means that the delivery has been made to the party the document was to be delivered to.

###### **Article 80**

- (1) In case that several parties jointly participating in the procedure with the same claims have no common attorney, they shall, on the occasion of the first action in the procedure, report to the authority their common proxy for reception of documents, if possible one who resides in the seat of the authority. Pending the reporting of the common proxy for reception of documents, such proxy shall be considered that party among them, who is first signed or specified in their first common petition request. If it should not be possible to identify a proxy in this way, the authorized official may determine any of the parties as a proxy. If the number of parties is big, or if they are from different places, the parties may

report, and the authorized official may as well determine several such proxies and specify which of them shall act for which party.

- (2) The common proxy for reception of documents shall forthwith inform all parties of the document he/she received on behalf of them and give them the opportunity to examine, transcribe and verify the document which, generally, he/she shall keep.
- (3) Each person, who the delivery is intended for, shall be specified in the document delivered to the proxy for reception of documents.

### **3) Delivery to State Authorities, Institutions and other Legal Persons**

#### **Article 81**

- (1) The delivery to state authorities, institutions and other legal persons shall be carried out by handing the document to the authorized official, respectively to a person assigned for the reception of documents, unless otherwise stipulated for individual cases.
- (2) In case that an organization, settlement, group of persons or others who do not have the attribute of a legal person (Article 38, paragraph 2) partake in a procedure, the delivery shall be carried out by handing the document to the person they authorized, respectively assigned therefore (Article 41, paragraph 4).
- (3) If the messenger shall not find the person assigned to receive documents during working hours, he/she may make the delivery to any employee in the state authority, institution, or other legal person mentioned in paragraph 1 of this Article, who is present in their premises.

### **4) Delivery to other Persons**

#### **Article 82**

- (1) The delivery to persons who are abroad, as well as to persons in the country who enjoy diplomatic immunity, shall be carried out by the assistance of the ministry competent for foreign affairs, unless otherwise stipulated by an international agreement.
- (2) The delivery to citizens abroad of registry documents, certificates, testimonials and other documents, issued on the request of a party, may be carried out directly. The delivery of decisions and conclusions shall be carried out through the state's diplomatic and consular representative offices abroad.
- (3) The delivery to members of the military or the police and to persons employed in the overland, river, maritime and aerial traffic shall be carried out through the relevant headquarters, respectively authority, or through the institution or other legal person they are employed with.

#### **Article 83**

The delivery to imprisoned persons shall be carried out through the administration of the institution they are situated in.

**5) Delivery by Means of Public Announcement**

**Article 84**

In case that there are a number of persons who are not known to the authority, or who can not be identified, the delivery shall be carried out by means of a public announcement at the notice board of the authority having issued the document. The delivery shall be considered as carried out after expiration of 15 days from the day of the posting of the announcement at the notice board, if the authority that issued the document does not determine a longer period. Beside the announcement at the notice board, the authority shall as well publish an announcement in the daily press, respectively in other means of public information or in another customary manner.

**6) Refusal of Acceptance**

**Article 85**

- (1) In case that the addressee of the document, or an adult member of his/her household should refuse to accept a document without a legal ground, or if this is done by an employee in a state authority, enterprise or other legal person, or a attorney's office, or if this is done by the person assigned to receive documents by an organization, settlement, group of persons or others who do not have the attribute of a legal person (Article 38, paragraph 2), the messenger shall leave the document in the apartment or in the premise where the respective person is employed, or attach the document to the door of the apartment or premise.
- (2) When the delivery has been carried out in the manner specified in paragraph 1 of this Article, the messenger shall record in the delivery receipt the day, time and reason for the refusal of acceptance, as well as the place where he/she left the document, and it shall be considered that the delivery has thereby been carried out.

**7) Change of Domicile, Residence or Headquarters**

**Article 86**

- (1) In case that the party or his/her legal representative, during the course of a procedure, change their domicile, or residence or seat, they shall forthwith inform thereof the authority conducting the procedure.
- (2) If they fail to do so, and the messenger can not find out where they moved, the authority shall determine that all further deliveries in the procedure for that party be carried out by posting the documents on the notice board of the authority conducting the procedure.
- (3) The delivery shall be considered as carried out upon the expiration of eight days from the day the document has been posted on the notice board of the authority conducting the procedure.
- (4) In case that the attorney, or proxy for reception of documents changes his/her domicile, respectively residence during the course of the procedure, and fails to inform thereof the authority conducting the procedure, the delivery shall be carried out as if the attorney had not been assigned.

## **5. *The Delivery Receipt***

### **Article 87**

- (1) The receipt for performed delivery (delivery receipt) shall be signed by the recipient and the messenger. The recipient shall personally note the date of reception on the delivery receipt.
- (2) In the case that the recipient is illiterate or incapacitated to sign, the messenger shall note on the delivery receipt his/her name and the day of delivery and put down a remark why the recipient failed to sign.
- (3) If the recipient refuses to sign the delivery receipt, the messenger shall note this on the delivery receipt and write in letters the day of delivery of the document, and it shall thereby be considered that the delivery has been carried out accurately.
- (4) If the delivery was made to one of the persons said in Article 73 of this Law, the messenger shall note down on the delivery receipt the name of the person whom the document has been handed to, and the relation of this person to the person the document was to be served on.
- (5) If the delivery was carried out according to Article 75 of this Law, the day of announcement, as well as the day of delivery of the document to the competent authority, on whose territory the domicile, respectively residence of the addressee is, or to the post office in his/her domicile, respectively residence, shall be noted on the delivery receipt.
- (6) The Ministry competent for state administration shall stipulate the form and manner of electronic delivery.

## **6. *Errors in the Delivery***

### **Article 88**

- (1) If an error occurs on the occasion of a delivery, it shall be considered that the delivery had been carried out on the day it was ascertained that the addressee actually received the document.
- (2) If the delivery receipt disappears, the delivery may be proven by other means.

## **Chapter VI DEADLINES**

### **Article 89**

- (1) Deadlines may be determined for the undertaking of certain actions in the procedure.
- (2) If the deadlines are not determined by the law or other regulation, they shall be determined, with respect to the circumstances of the case, by the authorized official.
- (3) The deadline determined by the authorized official, as well as the deadline determined by regulations, for which extensions are provided for, may be extended upon petition of the interested person submitted prior to the expiration of the deadline, if there are justifiable

reasons for the extension.

**Article 90**

- (1) Deadlines shall be set in days, months and years, while they can as well be counted in hours.
- (2) When a deadline is determined in days, the day when the delivery or announcement was carried out, i.e. the day on which the case falls, from which the deadline is to be counted, shall not be calculated in the deadline. The first subsequent day shall be taken as the commencement of the deadline. A deadline that is determined in months or in years shall expire with the end of the day, month or year, which corresponds by its number to the day the delivery or announcement was carried out, i.e. to the day on which the case, the deadline is counted from, falls. If this day does not exist in the last month, the deadline shall expire on the last day of that month.
- (3) The expiration of a deadline may as well be indicated on a specific calendar day.

**Article 91**

- (1) The commencement and course of a deadline shall not be withheld by Sundays and holidays.
- (2) If the last day of a deadline falls on a Sunday or a holiday, or on another day when the authority, before which the action is to be undertaken, does not work, the deadline shall terminate at the end of the next subsequent working day.

**Article 92**

- (1) A petition request is submitted within a deadline, if it arrives in the authority, with which it was to be filed, before the expiration of the deadline.
- (2) When a petition request was sent by registered mail or by telegraph, respectively telefax, the day of delivery to the post office, respectively the day of reception of the fax, shall be considered as the day of submission to the authority it was addressed to.
- (3) If a petition request was sent electronically, it shall be considered well-timed if the information system for delivery and notification received it prior to the expiration of the deadline.
- (4) For persons on duty in the armed forces, the day of delivery of the petition request to the military unit, respectively to the military institution or central command shall be considered as the day of submission to the authority it was addressed to.
- (5) For imprisoned persons, the day of delivery of the petition request to the administration of the institution they are situated in, shall be considered as the day of submission to the authority it was addressed to.
- (6) If an authority determined the day for deliberation on a petition request a party is liable to submit, and it called upon the party to submit the petition request until a specified day, the

authority shall take into consideration the petition request that was received before the beginning of the deliberation.

## **Chapter VII RESTITUTIO IN INTEGRUM**

### **Article 93**

- (1) In case that a party has failed to perform an action of a procedure within the specified deadline for justifiable reasons, and he/she was therefore excluded from performing this action, he/she shall, on his/her request, be granted restitution.
- (2) Restitution shall be granted on the request of a party that failed to submit a petition request in the given deadline, even in the case that, due to ignorance or erroneously, he/she submitted the petition request by post in time, respectively, if he/she submitted but to a non-competent authority.
- (3) Restitution shall as well be granted, if the party might lose some right due to the delay, when the party passed the deadline due to obvious omission, yet the petition request was received by the competent authority three days after the expiration of the deadline at the latest.

### **Article 94**

- (1) In the request for restitution, the party shall present the circumstances that prevented him/her to perform the omitted action and to make these circumstances plausible.
- (2) The request for restitution may not be based on a circumstance that was earlier assessed by the authority as insufficient for the extension of the deadline or postponement of the hearing.
- (3) If restitution is sought because of omission to submit some petition request, this petition request shall be enclosed in the request as well.

### **Article 95**

- (1) A request for restitution shall be filed within eight days from the day the reason that caused the omission ceased, and if the party discovered the omission only later – from the day of discovery thereof.
- (2) After expiration of three months from the day of omission, it shall not be possible to ask for restitution.
- (3) If the deadline for request of restitution was missed, it shall not be possible to seek restitution due to the omission of that deadline.

**Article 96**

- (1) The request for restitution shall be filed to the competent authority, before which the omitted action was to be performed.
- (2) The request for restitution shall be decided on by a conclusion, by the authority before which the omitted action should be performed.
- (3) An untimely filed request for restitution shall be rejected without further procedure.
- (4) If the facts supporting a request for restitution are conspicuous, the authority may decide on this request without statement of the opponent party.

**Article 97**

- (1) Appeal against a conclusion granting restitution shall not be permitted, unless the restitution was granted upon an untimely filed or illegitimate request (Article 95, paragraph 3).
- (2) Special appeal against a conclusion, by which a request for restitution was rejected, may be filed, unless the conclusion was passed by a second instance authority.
- (3) Appeal shall not be permitted against a conclusion on a request for restitution that was passed by the authority competent for decision-making in second instance on the head matter.

**Article 98**

- (1) The request for restitution shall not defer the course of the procedure, yet the authority relevant for decision-making in this request may temporarily interrupt the procedure pending the finality of the conclusion on the request.
- (2) When restitution is granted, the procedure shall be restored to the condition in which it had been prior to the omission, and all decisions and conclusions passed in relation to the omission shall be nullified.

**Chapter VIII**  
**KEEPING ORDER WITHIN THE PROCEDURE**

**Article 99**

- (1) An authorized official shall keep order during the procedure.
- (2) An authorized official shall warn persons disturbing the work of the authority, as well as undertake other measures necessary for keeping order.
- (3) Persons who attend the administrative procedure must not bring arms or dangerous weapons. If such persons do possess any arms or dangerous weapons, they shall deliver it to the authorized official. Otherwise, such persons shall not be allowed to attend the

procedure. Upon completion of the actions of the procedure, arms i.e. dangerous weapons shall be returned to the persons who handed them over to an authorized official.

#### **Article 100**

(1) A person who, in defiance of a reprimand, continues to disturb order or who behaves indecently in the course of the procedure may be removed. A person who participates in an action of an administrative procedure can be removed solely upon a prior reprimand that he/she shall be removed and upon presenting the legal consequences of such a measure. Removal due to disturbing of order or due to indecency in behaviour shall be ordered by the authorized official.

(2) Should, pursuant to paragraph 1 of this Article, a party that has no attorney, be removed or should the attorney be removed, and the party who he/she represents is not present, the authorized official shall invite the person to be removed to appoint his/her attorney. Should the invited person fail to do so, the authorized official may adjourn the procedure at the expense of the person who rejected to appoint his attorney, while the authorized official may appoint an attorney for that person, if necessary. Such an attorney may represent the party solely during that action in the procedure the party has been removed from.

#### **Article 101**

(1) Everyone who in the course of the procedure seriously disturbs order and the work of the authority, insults the competent authority or an authorized official or behaves indecently, apart from removal from the procedure, he/she may be liable to a fine for violation of the procedural discipline in the amount of EUR 50.

(2) The fine referred to in paragraph 1 of this Article shall not exclude criminal, tort or disciplinary liability.

(3) The fine referred to in paragraph 1 of this Article may be imposed to a person who by his/her petition request seriously impairs the reputation of the competent authority or an authorized official.

#### **Article 102**

(1) The fine for acts referred to in Article 101, paragraph 1 of this Law, shall be pronounced by the authorized official, and for acts foreseen by Article 101, paragraph 3 – by the competent authority conducting the procedure.

(2) Special appeal may be lodged against the decision on the fine. The appeal against the conclusion on the fine due to disturbance of order, shall not postpone the execution of the penalty.

## Chapter IX

### COSTS OF THE PROCEDURE

#### *1. Costs of the Competent Authority and Parties to the Procedure*

##### **Article 103**

(1) Special costs of the competent authority, such as: travel costs of authorized officials, expenses for witnesses, experts, interpreters, as well as costs of inquiry on the spot, announcements etc., incurred by the conduct of an administrative procedure, shall be, as a rule, borne by the party which initiated the entire procedure.

(2) When a person participating in the procedure causes by his/her fault or out of prank expenses of particular actions within the administrative procedure, such a person shall bear the costs.

(3) When an administrative procedure initiated ex officio is completed in favour of a party, the procedural costs shall be borne by the authority that has instituted the procedure.

##### **Article 104**

(1) Each party to the administrative procedure shall, as a rule, bear its own costs caused by the procedure, such as: costs of arrival waste of time, expenses regarding fees, legal representation and expert assistance.

(2) When in an administrative procedure, two or more parties having opposite interests participate, the party that has caused the procedure and to the detriment of which the procedure has been completed, shall compensate the adverse party to the procedure for all reasonable costs incurred within the procedure. Should it happen that, in such an case, one party has just partially succeeded in its request; it shall compensate the adverse party for the costs proportionate to that part of its request by which it has failed. The party that incurred costs in the procedure to the other party out of prank, shall be obliged to recompense it for such costs.

(3) The claim for compensation of costs pursuant to the provisions of paragraphs 1 and 2 of this Article must be lodged in a timely manner, in order to enable the competent authority to decide upon it in its resolution. Otherwise, the party shall forfeit the right to compensation of costs. The authorized official shall notify the party thereof.

(4) Each of the party to the procedure shall bear its own costs of the procedure that has been resolved by settlement, unless otherwise provided by the settlement.

(5) Costs of a party and of a third person to the procedure, incurred by the procedure initiated ex officio of duty or in public interest, and which had not been caused by the party or third person to the procedure, shall be borne by the competent authority.

**Article 105**

Procedural costs regarding the execution shall be borne by the party that is obliged to execute the resolution. Should it happen that such costs cannot be collected from that party, the costs shall be borne by the party according to the proposal of which the execution has been conducted.

**Article 106**

Should the administrative procedure be initiated on request of a party, while it can be determined with certainty that the party shall incur special expenses in cash (regarding the inquiry on the spot, expert's fee, arrival of witnesses, etc.), the authorized authority may decide by a conclusion that a party deposits in advance a needed amount for the purpose of covering such costs. Should the party fail to deposit the said amount within the set time limit, the authority may repeal of presentation of such evidence or interrupt the administrative procedure, unless the continuation of the procedure in question represents a public interest.

**Article 107**

(1) In the decision by which the administrative procedure is to be completed, the authorized authority shall decide who shall bear the procedural costs, as well as the amount of such costs, authorities to which it has to be paid and the time limit specified for payment.

(2) Specifically stated in the decision shall be whether or not the party which bears the costs must compensate the other party for the costs (Article 104, paragraphs 2 and 3).

(3) Should the procedural costs be borne by several persons, the costs shall be distributed proportionally i.e. divided in equal parts between the parties.

(4) Should the competent authority fail to decide in its decision on the costs, the decision shall contain the statement that a special conclusion shall be made regarding the procedural costs.

**Article 108**

(1) Witnesses, experts, interpreters and persons acting in an official capacity, shall be entitled to reimbursement of travelling costs and expenses incurred by their stay in a particular place. If they are entitled to a salary during that time, they shall also have the right to a prescribed recompense for any lost salary. In addition to the prescribed recompense, experts and interpreters shall also be entitled to a specially prescribed reward for their performed work of expert investigation and interpreting.

(2) Witnesses, experts and interpreters shall be obliged to submit their requests for recompense i.e. reward on the occasion of hearing, giving their opinion as experts or interpreting. Should they fail to do so, they shall forfeit that right. The authorized official shall give a notification in that respect to witnesses, experts and interpreters.

(3) The amount of recompense i.e. reward shall be prescribed by a special conclusion passed by the authorized authority, stating in details who shall be responsible for its payment and setting the time limits. Against this conclusion special appeal shall be permitted. This conclusion represents a basis for execution (enforceable document).

**Article 109**

(1) The Government shall be in charge of passing a regulation on the recompense of costs in the administrative procedure.

(2) As regards the recompense for official persons, regulations governing these issues for such persons shall apply.

**2. Exemption from Payment of Procedural Costs**

**Article 110**

(1) The authorized authority may exempt a party from payment of costs either completely or partially, if it finds that such costs cannot be borne without incurring damage to the necessary maintenance of the party or his/her family. The authority shall pass a conclusion, on the request of the party to the procedure, on the basis of an official certificate on his/her property issued by a competent authority.

(2) Exemption from payment of procedural costs shall mean the exemption from fees and expenses of the authority in charge of the administrative procedure, such as travelling costs of official persons, expenses for witnesses, experts and interpreters, inquiry on the spot, announcements etc., as well as exemption from payment of a deposit for the costs.

(3) Foreign citizens shall be exempted from the payment of costs when so prescribed by the international treaty or, if there is no such treaty, according to the principle of reciprocity. In the case of any doubt in respect to the existence of such reciprocity, a relevant explanation shall be obtained from the ministry competent for foreign affairs.

**Article 111**

The authorized authority may cancel the conclusion on exemption from payment of procedural costs should it ascertain that the reasons due to which a party has been released from payment of costs, exist no more.

**Article 112**

A party may lodge a special appeal against the conclusion by which the party's claim for exemption of costs payment was rejected, as well as against the conclusion referred to in Article 111 of this Law.

**PART TWO  
FIRST- INSTANCE PROCEDURE**

**Chapter X**

**INSTITUTION OF A PROCEDURE AND CLAIMS BY PARTIES TO THE  
PROCEDURE**

**1. Institution of a Procedure**

**Article 113**

The administrative procedure shall be instituted by an authority ex officio or on request of a party.

**Article 114**

(1) The competent authority shall institute the procedure ex officio if so prescribed by the law or other regulation and when it ascertains or comes to the knowledge that, taking into consideration the existing state of facts, the procedure should be initiated for the purpose of protection of public interest.

(2) On the occasion of institution of the administrative procedure ex officio, the competent authority shall take into consideration any likely requests of citizens and organizations as well as admonition given by the competent authorities.

**Article 115**

The administrative procedure initiated ex officio shall be deemed instituted as soon as the authorized authority executes any of the actions for the purpose of conduction of the procedure.

**Article 116**

(1) The procedure on request of a party shall be deemed instituted on the day of receipt of the party's request.

(2) The competent authority shall reject by its decision the party's request, in the following cases:

- 1) if the subject matter of the procedure does not represent an administrative matter,
- 2) if the party lodging a request is not the holder of a right (rightful claimant) or of a legal interest i.e. if it cannot be, pursuant to this law, a party to the administrative procedure,
- 3) if the claim has not been lodged within the set time limit,
- 4) if, within the same administrative matter, another procedure or court proceedings have already been instituted, or if within that administrative matter a resolution has already come into effect by which a right is recognized or an obligation determined to a party to the procedure. The competent authority shall also proceed in the same manner when a resolution has been passed in the same administrative matter by which the party's claim has been rejected, and there have been no changes ever since to the legal and factual state.

(3) The authority may reject the claim in the course of the procedure should it ascertain the existence of reasons referred to in the preceding paragraph of this Article.

(4) An appeal may be lodged against the decision by which the party's claim has been rejected.

**Article 117**

Within administrative matters in which, according to the law or by nature of things, a party's claim is required for institution and administration of the procedure, the competent authority shall be allowed to initiate and administer the procedure solely if there exist such a claim.

## **2. Consolidation of Actions**

### **Article 118**

(1) Should the rights or obligations of parties to the procedure be grounded upon the same or similar factual state and upon the same legal basis, and should the authorized authority have jurisdiction *ratione materiae* (statutory competence) in respect to all matters, only one administrative procedure may be instituted and administered, even when rights and obligations of several parties are in question.

(2) It is under the same conditions that one or more parties to the procedure may exercise several different claims within the same procedure.

(3) The competent authority shall make a special decision on administration of one procedure in the cases referred to in Paragraphs 1 and 2 of this Article. An appeal may be lodged against such a decision, unless the decision is passed by a second-instance authority.

### **Article 119**

The authority may institute the administrative procedure by a public announcement towards several persons not known to the authority or who cannot be determined, but who can have the position of parties to the procedure, should it be the case of basically the same claim towards all of them.

### **Article 120**

(1) When, in virtue of Article 118 of this law, one procedure is administered or when one procedure is instituted by a public announcement in virtue of Article 119 of this Law, each of the parties shall participate independently in the procedure.

(2) In decisions by which, within the procedure referred to in Paragraph 1 of this Article, measures are undertaken towards parties, it should be specified which of these measures relate to each of the parties, unless parties participate jointly in the procedure with their identical requests or unless otherwise specified by the law.

## **3. Changes to the Claims**

### **Article 121**

(1) After the procedure has been instituted, a party to the procedure may, until a resolution is passed in the first instance, extend the lodged claim or lodge another claim instead of the former one, regardless of the fact whether the extended or replaced claim is grounded upon the same legal basis, provided that such a claim is grounded on a basically the same factual state.

(2) Should it happen that the authorized authority does not allow any extension or replacement of a claim, it shall make a relevant decision in that respect. An appeal shall be permitted against such a decision.

#### **4. Abandonment of Action**

##### **Article 122**

- (1) A party may abandon from its claim in the course of the procedure
- (2) Should there be an adverse party to the procedure, the party who has lodged the claim may abandon the claim until the adverse party at the oral hearing proceeds with the discussion on the subject matter. If the adverse party has already entered the hearing on the subject matter, the party who has lodged the claim may desist from the claim solely upon the consent of the other party that can be given immediately or within eight days. Should the adverse party fail to say anything, it shall be deemed as if the party agrees with the abandonment of action.
- (3) When the procedure has been initiated regarding a party's claim, whereas the party desists from its claim, the authorized shall make a decision on the stay of the procedure. The adverse party, if there is any, shall be informed in that respect.
- (4) Should further continuation of the procedure be in the public interest or if so required by the adverse party, the authority shall continue with administration of the procedure.
- (5) When the procedure has been instituted ex officio, the authority may interrupt the procedure. If the procedure on the same administrative matter could have been initiated on request of a party, the procedure shall be continued if so required by the party.
- (6) An appeal may be lodged against the decision on the termination of the administrative procedure.

##### **Article 123**

- (1) A party may abandon its claim by making a statement to the authorized authority. The party may cancel its abandonment of action until the authorized authority renders a decision on termination of the procedure and presents it to the party.
- (2) Particular action or failure to act by a party can be deemed its abandonment of the claim solely if so specified by the law.
- (3) If a party has abandoned its claim upon the first-instance resolution and before expiration of the time period specified for lodging an appeal, the decision on the termination of the procedure shall invalidate the first-instance resolution if the party's claim has been positively or partially resolved by it. If the party has abandon its claim after lodging an appeal and before delivery of a resolution regarding its appeal, the decision on the termination of the procedure shall invalidate the first-instance resolution by which the party's claim has been adopted, either completely or partially, if the party has completely abandoned its claim.

##### **Article 124**

The party that abandoned its claim shall be obliged to bear all costs incurred until the termination of the procedure, unless otherwise prescribed by other regulations.

## **5. Settlement**

### **Article 125**

(1) Should two or more parties with opposite claims participate in the administrative procedure, the person acting in an official capacity shall put all the efforts in the course of the procedure that parties be reconciled, either completely or at least in respect to specific disputable issues.

(2) Settlement must always be clear and precisely determined and it should not be to the detriment of public interest, public moral or legal interest of third persons. Should it be determined that settlement may be to the detriment of public interest, public moral or legal interest of third persons, the authorized authority shall not agree with the conclusion of the settlement and it shall render a special decision in that respect.

(3) Settlement shall be entered into the official report on settlement. Settlement shall be deemed concluded when parties, after reading the report on settlement, affix their signatures to the report. The certified transcript of the report shall be delivered to parties, if so required by them.

(4) Settlement shall have legal validity of an enforceable resolution made within the procedure (enforceable document).

(5) The authority in front of which the settlement has been concluded shall make a decision by which the procedure shall, if so needed, be interrupted completely or partially.

(6) Should the conclusion on the termination i.e. continuation of the procedure be contrary to the concluded settlement, an appeal shall be permitted against the decision.

## **Chapter XI**

### **PROCEDURE PRECEDING THE PASSAGE OF A RESOLUTION**

#### **A. General Principles**

##### **1. Common Provisions**

#### **Article 126**

(1) All decisive facts and circumstances of relevance for rendering a resolution must be ascertained prior to the passage of a resolution, and parties must be enabled to exercise and protect their rights and legal interests.

(2) Facts and circumstances referred to in Paragraph 1 of this Article shall be ascertained and rights and legal interests referred to in the same Paragraphs shall be exercised and protected within a summarized procedure (Article 133) or within a special investigative procedure (Articles 134 and 135).

(3) Particulars / data representing an official secret or data pertaining to a personality may be provided by a person acting in an official capacity in the authorized authority solely if so prescribed by a special law i.e. on the basis of a permission in writing by a party or other person such particulars and data are related to.

**Article 127**

(1) An authorized official may in the course of the procedure complete the factual state and present evidences for the purpose of ascertainment of those facts, as well, produced or determined within the procedure.

(2) An authorized official shall order ex officio the presentation of each evidence if found to be indispensable for the purpose of explanation of things.

(3) An authorized official shall collect ex officio the data regarding the facts official records of which are maintained by the authority in charge of deciding on administrative matters. It is in the same manner that the authorized official shall proceed in respect to the facts official records of which are maintained by another authority.

(4) Official records in accordance to this law shall be deemed to mean records established by the law or other enactments, used for an organized registration or recording of data or facts intended for specific purposes i.e. needs of specific users.

**Article 128**

(1) The factual state grounded upon which is the party's claim, shall be presented by the party in question in an accurate, complete and precise manner.

(2) Should it be not about the facts of common knowledge, the party shall be obliged to propose evidences for its assertions and to present hem, if possible. If the party fails to do that, the authorized official shall ask it to proceed accordingly. The party shall not be required either to collect and produce that can be collected more easily and efficiently by the authorized authority or to present certificates and other documents that authorities are not obliged to issue pursuant to the provisions of Articles 165 and 166 of this law.

(3) Should it happen that a party fails to propose or produce, if possible, evidences in the subsequently specified time limit, the authority shall reject the claim by rendering a decision as if it were not appropriately lodged (Article 57, Paragraph 2). An appeal shall be permitted against such a decision.

**Article 129**

(1) A party shall, as a rule, make its statement in oral form.

(2) When it is about a complex administrative matter or when more extensive expert explanations are required, an authorized official may order the party to make a statement in written form and within the set time limit. In that case, the party shall also have the right to request to obtain a written statement.

(3) Should it be ordered or permitted to a party to make a statement in a written form, it shall not be deprived of the right to make its statement in oral form.

**Article 130**

(1) Should it happen that in the course of the procedure a person appears who has not participated in the procedure so far as a party to the procedure, and if that person requires to

participate in the procedure as a party, a authorized official may, at the special oral hearing, investigate his/her right to be a party to the procedure and thereupon pass a relevant decision in that respect.

(2) An appeal shall be permitted against the decision by which that right is or is not recognized.

(3) The procedure shall be continued upon coming into effect of the decision.

#### **Article 131**

(1) An authorized official shall be obliged to give an admonition, if needed, to a party regarding its rights in the procedure and to indicate in the course of the procedure to the legal consequences of its actions or failures to act.

(2) The authorized authority shall, prior to the commencement of the preliminary investigative procedure, summon up all persons who are deemed to be able to state their legal interest for participation in the procedure. Should the authority dispose of no information regarding first and family names of persons who may state their legal interest for participation in the procedure, he/she can invite them by delivering a public notification or in other appropriate manner.

(3) If the persons invited in such a manner make their written statement, they should not be invited to attend the procedure in person.

(4) Persons invited in the manner referred to in Paragraph 2 of this Article and informed about the procedure, but who failed to answer the invitation, shall not be entitled to an appeal against the decision passed in the procedure.

(5) Persons who assert that they have not been offered an opportunity to participate in the procedure, though they have been entitled to that, may ask that an decision be submitted to them within the time period set for lodging an appeal by the party that decision has been rendered to.

#### ***Preparatory Procedure***

##### **Article 132**

(1) Preparatory procedure shall be determined by the authorized authority, if an oral hearing i.e. inquiry is to be conducted.

(2) The authorized authority must, at least seven days prior to the preparatory procedure, summon up parties and other persons if it deems that their presence shall be necessary. The authority shall, together with the summons to appear, deliver to the party a petition that represents a basis for establishment of the preparatory procedure, whereas the summons shall contain the specified date, place and time of conducting the preparatory procedure.

(3) If the authority has commenced the procedure ex officio, specified in the summons shall be which of the procedural actions are to be conducted within the preparatory procedure.

- (4) The authority shall give an admonition to the invited persons in respect to the legal consequences of their unreasonable failure to appear.
- (5) Preparatory procedure shall, as a rule, be conducted in the headquarters of the authorized authority.
- (6) The authority may also designate other place to conduct the preparatory procedure if so more practical.
- (7) No appeal shall be permitted against the decision referred to in the preceding Paragraph 6 of this Article.
- (8) The authority may adjourn the preparatory procedure upon its own initiative or on request of the party to the procedure, if there exist reasonable grounds for doing so.
- (9) No appeal shall be permitted against the decision permitting or prohibiting the preparatory procedure.

### ***3. Summary Procedure***

#### **Article 133**

The authority may decide on an administrative matter directly, applying the summary procedure, in the following cases:

- 1) if a party has stated in its claim the facts or presented evidences based on which the state of affairs can be determined or if that state can be ascertained on the basis of facts of common knowledge or facts known to the authority,
- 2) if the state of affairs can be ascertained by an immediate insight i.e. on the basis of official data available to the authority, and no special examination of the party is needed for the purpose of protection of its rights i.e. its legal interests,
- 3) if it is envisaged by an enactment that the administrative matter can be decided on the basis of facts or circumstances that are not determined completely or that are ascertained by evidences only indirectly, thus having made facts or circumstances probable, whereas it results from all circumstances that the party's claim should be satisfied,
- 4) if urgent measures are to be undertaken in the public interest that cannot be postponed, while the facts upon which the decision has to be grounded are ascertained or at least made probable. Urgent measures shall exist if life and health of people are endangered, as well as public order and peace, public security or property of a great value.

### ***4. Special Investigative Procedure***

#### **Article 134**

(1) A special investigative procedure shall be conducted when so needed for the purpose of ascertainment of decisive facts and circumstances of relevance for explanation of

administrative matters or for the purpose of enabling parties to exercise and protect their rights and legal interests.

(2) The course of the investigative procedure shall be determined, according to the circumstances of each particular case, by a person acting in an official capacity who administers the procedure, pursuant to the provisions of this law and other enactments related to the administrative matter in question.

(3) Within the scope referred to in Paragraphs 1 and 2 of this Article, an authorized official shall specifically: ascertain which actions within the procedure are to be executed and shall issue decisions for their execution, ascertain the sequence according to which specific actions are to be conducted and set time limits for their execution (unless prescribed by the law), determine the oral hearing and examination, as well as everything needed for its conduct, decide which of the evidences are to be presented and decide on all proposals and statements made in the course of the procedure.

(4) An authorized official shall decide whether the hearing and presentation of evidences shall be conducted separately for each particular disputable issue, or uniformly for the entire subject matter.

#### **Article 135**

(1) A party shall have the right to participate in the investigative procedure and to give needed data for the purpose of obtaining the aim of the procedure and to defend its rights and interests guaranteed by the law.

(2) A party shall have the right to present the facts that may be of relevance for resolution of the administrative matter, to propose evidences for the purpose of ascertainment of these facts and to deny authenticity of statements that do not agree with its assertions. It shall have the right to supplement and explain its assertions prior to the passage of an decision, and if it does so after the oral hearing, it shall be obliged to explain why it has failed to proceed in that manner at the hearing.

(3) An authorized official shall be obliged to enable a party to the procedure to declare itself on all circumstances and facts presented within the investigative procedure and on proposals and offered evidences, as well as to participate in presentation of evidences and to put questions to other parties, witnesses and experts through an authorized official or directly with his/her permit, and to be acquainted with the results of presentation of evidences and to give its opinion in that respect. The authority should not pass an decision prior to enabling a party to give its opinion on the facts and circumstances the decision should be grounded on, and on which the party has not been offered an opportunity to present its opinion (unless the examination of the party is excluded either by the present or a special act).

#### ***Precedent Issue***

#### **Article 136**

(1) Should the authorized authority be encountered with an issue without resolution of which the administrative matter itself cannot be decided, whereas that issue represents an independent legal entirety for the resolution of which a court or other authority is competent (precedent issue), it may, on conditions prescribed by this law, discuss the issue by itself, or

interrupt the procedure until the competent authority resolves that issue. A decision shall be made on interruption of the procedure against which an appeal is permitted, unless such a decision has been made by a second-instance authority.

(2) Should the authorized authority discuss the precedent issue by itself, the resolution of such an issue shall have a legal effect solely in the administrative matter in the course of which it has been passed.

(3) As regards the existence of a criminal offence and criminal liability of an offender, the authorized authority shall be bound by the enforceable judgment of the court by which the accused has been convicted.

#### **Article 137**

(1) The authorized authority must interrupt the procedure when the precedent issue refers to the existence of a criminal offence, existence of a marriage, affiliation or when so envisaged by the law.

(2) When the precedent issue is related to a criminal offence prosecution for which is undertaken ex officio, and if there are no possibilities for criminal prosecution, the authorized authority shall also discuss that issue.

#### **Article 138**

If for the reason of a precedent issue the administrative procedure should not be interrupted, the authorized authority may take into consideration by itself the precedent issue and discuss it as being the constituent part of the administrative matter and on these grounds resolve the administrative matter.

#### **Article 139**

(1) Should the authorized authority fail to take into consideration the precedent issue in virtue of Article 138 of this law, whereas the procedure that can be administered solely ex officio has not yet been initiated before the competent authority, it shall require that a competent authority institutes a procedure regarding that issue.

(2) In the administrative matter in which the procedure for resolution of a precedent issue is initiated on the occasion of a party's request, the authorized authority may order by its decision to one of the parties to request from the competent authority, for the purpose of resolution of the precedent issue, to institute proceedings, specifying the time limit, as well as to present a relevant evidence. The authorized authority shall, on that occasion, give an admonition to the party in question in respect to the consequences of its failure to do so. The time limit set for the institution of proceedings for the purpose of resolution of the precedent issue shall commence from the date of enforceability of the decision.

(3) Should the party regarding the request of which the procedure has been instituted fail to present within the specified time limit the evidence that it has requested from a competent authority to institute proceedings on the precedent issue, it shall be deemed as if the party in question has abandoned its request, whereas the authorized authority shall interrupt the

procedure. If that has not been done by the adverse party, the authority shall continue the procedure and discuss the precedent issue by itself.

(4) An appeal shall be permitted against the decision referred to in Paragraph 2 of this Article.

#### **Article 140**

The procedure initiated for the purpose of resolution of the precedent issue before the competent authority shall be continued after having been finally decided about that issue.

### ***6. Interruption of the Procedure***

#### **Article 141**

(1) The procedure may be interrupted in the following cases:

1. if a party to the procedure dies, while the rights and obligations i.e. legal interest that are decided upon within the administrative procedure may be transferred to legal successors. In that case, the authority shall notify legal successors on the possibility of their participation in the procedure and deliver them a decision on the interruption of the procedure,
2. if a party is deprived of its civil capacity, while it has no proxy in the procedure or if the authority fails to appoint its temporary representative. In that case the authority shall present the decision on the interruption of procedure to the institution in charge of social issues,
3. if a legal successor of the party dies or be deprived of civil capacity, whereas the party has no proxy i.e. legal representative, or no temporary representative is appointed. In that case the authority shall deliver the decision on the stay of procedure to the institution in charge of social issues; if it is about a legal person, the decision shall be presented to the authority in charge of appointing legal representatives,
4. if the authorized authority decides not to decide on the precedent issue by itself i.e. should it be not permitted by law to decide upon precedent issues by itself,
5. if legal consequences of a bankruptcy procedure become enforceable upon a party to the procedure, and in that case the decision shall be delivered to the bankrupt,
6. if a person has lodged an appeal against the decision by which the status of a party or interested person has not been recognized.

(2) Interruption of the procedure shall last as long as grounds referred to in Paragraph 1 of this Article do exist, this being as follows:

- 1) grounds referred to in Item 1 – until the legal successor joins the procedure,
- 2) grounds referred to in Items 2 and 3 – until the party appoints its legal representative,
- 3) grounds referred to in Item 4 – until the precedent issue becomes enforceable i.e. until it is decided to come into effect,
- 4) grounds referred to in Item 5 – until the trustee in bankruptcy joins the procedure,

- 5) grounds referred to in Item 6 - until the appeal against the decision is decided by passing an enforceable decision.

(3) By the interruption of the procedure, all time limits set for the procedural actions shall be annulled. At the time of the interruption of the procedure, the time limit set for passing the decision referred to in Article 212, Paragraph 1 i.e. Article 242, Paragraph 1 of this law shall not be in effect.

(4) An appeal shall be permitted against the decision by which the interruption of the procedure is ordered. Such an appeal shall not prevent the execution of the above decision.

## **7. Oral Hearing**

### **Article 142**

(1) An authorized official shall determine, upon its own initiative or upon a proposal of a party, the oral hearing whenever it is deemed useful for explanation of an administrative matter, but it must be determined in the following cases:

- 1) in administrative matters in which two or more parties participate having adverse interests, or
- 2) when an investigation has to be conducted or a witness or expert to be interrogated.

(2) In case of deciding on the request referred to in Article 39, Paragraph 1 of this law, an authorized official may call for an oral hearing.

(3) Should the authority dispose of adequate technical conditions, an authorized official may, on proposal of a party, call for a video hearing.

(4) In the case of a video hearing, provisions of this law related to an oral hearing shall apply accordingly.

### **Article 143**

(1) An oral hearing shall be open to public.

(2) An authorized official may order the exclusion of public, either completely or partially, in the following cases:

- 1) if so required by reasons of moral or public security,
- 2) if there exists a serious and immediate danger of disturbance of the oral hearing,
- 3) if the oral hearing is regarding the relations within a family,
- 4) if the oral hearing is regarding the circumstances that represent a secret from the domain of state, military, official, business, professional, scientific or art affairs.

(3) The proposal for the exclusion of public may be also submitted by an interested person.

(4) A decision shall be passed on the exclusion of public which must be supported by reasons and publicly announced within the information system in charge of communications and information issues.

(5) On the occasion of publication of a decision upon the completed procedure, the public cannot be excluded.

#### **Article 144**

(1) Exclusion of public shall not refer to parties, their representatives, proxies, authorized persons and expert assistants.

(2) An authorized official may allow that the oral hearing with the exclusion of public be attended by some authorized officials, research fellows and public personalities if so of interest for their office i.e. their research work. An authorized official shall give an admonition to such persons that they are obliged to keep as a secret everything they come to the knowledge of at the hearing.

#### **Article 145**

(1) The authorized authority shall be obliged to undertake all actions indispensable for the conduct of an oral hearing without any delay and, if possible, without interruption and adjournment.

(2) Persons summoned up to the hearing must be left a reasonable time to be prepared for the hearing and to arrive in due time and without any extraordinary costs. The persons summoned up to the hearing shall be left, as a rule, eight days from the delivery of summons to the date of the hearing.

#### **Article 146**

When it is necessary for the purpose of consideration of an administrative matter at the oral hearing to be acquainted with the plans, documents or other matters, these matters should be put at disposal of the persons invited to the hearing, at the same time when calling for an oral hearing, while the summons for the oral hearing shall contain the date and time when such matters shall be put at disposal of interested parties.

#### **Article 147**

(1) The authorized authority shall be obliged to publicly announce the oral hearing when there may exist a danger that individual summons shall not be delivered in due time, when there exists a possibility that there are interested persons who have not yet appeared in the capacity of parties to the procedure or when so required by other similar reasons.

(2) The public announcement of an oral hearing should contain all data that must be indicated in the individual summons, as well as that everyone who is of the opinion that the administrative matter in question concerns his/her own interests is invited to the oral hearing. That announcement shall be made in the manner prescribed in Article 84 of this law.

**Article 148**

An oral hearing shall be held, as a rule, in the headquarters of the authorized authority. Should any inquiry be required out of the authority's headquarters, the oral hearing may be held at the place of inquiry. The authorized authority may determine for the oral hearing another place when so required for the purpose of reduction of costs and a more thorough, efficient or more practicable conduct of the administrative matter in question.

**Article 149**

(1) An authorized official shall be obliged to determine at the very beginning of the oral hearing which of the summoned persons are present, and as regards the absent – to check whether invitations have been delivered to them regularly.

(2) Should it happen that any of the parties still unexamined fails to appear at the oral hearing, while it is not determined whether the invitation has been delivered or not, an authorized official shall adjourn the oral hearing, unless it has been publicly announced in due time.

(3) Should it happen that a party, on the request of which the administrative procedure has been initiated, fails to appear at the oral hearing, though appropriately invited, whereas from the overall state of affairs it can be supposed that its request has been withdrawn, the authorized authority shall interrupt the procedure. An appeal shall be permitted in that respect. If it is not possible to suppose that the party in question has withdrawn its request or if the procedure must be continued ex officio, the authorized official shall, according to the circumstances of the case, conduct the hearing without the person in question or it shall adjourn the hearing.

(4) Should the party against which the procedure has been instituted fail to appear with no justification, an authorized official may conduct the oral hearing without the party in question, while it also may adjourn the oral hearing at the party's cost if so required for the purpose of regular resolution of the matter.

**Article 150**

(1) Should the present party, though warned about the consequences, fail to give its objections in the course of the oral hearing to the actions undertaken at the oral hearing, it shall be deemed as if the party in question has no objections in that respect. Should the party put its objections subsequently to the actions undertaken at the oral hearing, the authority deciding on the administrative matter shall take these objections into consideration if it can have any impact to the resolution of the matter in question, though it has not been made after the oral hearing for the purpose of dragging out the procedure.

(2) Should the party summoned up by a public announcement fail to come to the oral hearing, but should it give its objections to the actions undertaken at the oral hearing after the oral hearing, these objections shall be taken into consideration on the condition referred to in Paragraph 1 of this Article.

**Article 151**

(1) At the oral hearing searched and determined should be what the subject of a special investigative procedure is.

(2) Should it happen that the subject of the special investigative procedure cannot be searched during one oral hearing, an authorized official, shall interrupt the oral hearing and schedule its continuation as soon as possible. The authorized official shall undertake all requisite measures for such a continuation that are prescribed for the conduct of the oral hearing, while he/she can inform the present persons verbally about such measures, as well as about the time and place of continuation of the hearing. On the occasion of continuation of the oral hearing, the authorized official shall present in general the course of the oral hearing conducted so far.

(3) For presentation of evidences in written form produced subsequently, it shall not be needed that the oral hearing be called for again, but the party shall be offered a possibility to declare itself on the produced evidences.

**B. Presentation of Evidence / Probative Procedure**

***1. Common Provisions***

**Article 152**

(1) Facts on the basis of which a decision is to be passed (decisive facts) shall be ascertained by evidences.

(2) All sources appropriate for the ascertainment of the state of affairs suitable for a specific case can be used as evidences, such as: documents, statements by witnesses, statements by parties, findings and opinions of experts, inquiry on the spot.

**Article 153**

(1) An authorized official, shall decide whether a certain fact should be ascertained or not, depending on whether the fact in question may have an impact on the resolution of the administrative matter. Evidences are, as a rule, presented upon determining what is disputable in the factual respect or what should be proved.

(2) Facts of common knowledge should not be proved.

(3) Facts the existence of which is supposed by the law should not be proved, but it is permitted to prove the non-existence of these facts, unless otherwise provided by the law.

**Article 154**

Should presentation of evidences before the authorized authority be impossible, associated with too large costs or enormous loss of time, presentation of evidences or of specific evidences can be conducted before the authority asked to do that.

### **Article 155**

When it is provided by a relevant regulation that an administrative matter may be resolved on the basis of facts or circumstances that are not completely ascertained or are ascertained by evidences indirectly (facts and circumstances made probable), presentation of evidences to that end is not related to the provisions of this law regarding the presentation of evidences.

### **Article 156**

(1) Should the authority deciding on the administrative matter have no adequate knowledge of the law applicable in a foreign country, it can be informed about that in the ministry competent for foreign affairs.

(2) The authority deciding on the administrative matter may request from a party to present a public document issued by a competent foreign authority to confirm the law applicable in the country by the authority of which the public document has been issued. It is permitted to present evidences that the foreign law is not the one contained in the public document, unless otherwise provided by the international treaty.

## **2. Documents**

### **Article 157**

(1) A document issued in a prescribed form by a state authority within the scope of its competencies i.e. by an institution and other legal person within the public powers assigned by the law (official document) shall be deemed to prove all that is verified or ascertained by it. That document can be made suitable for electronic data processing.

(2) The factual state can also be ascertained on the basis of data from computerized records. It shall be deemed the data from such computerized records represent a part of the document though not contained therein. Entered in the minutes i.e. official report shall be where and how these data can become accessible.

(3) Within the procedure of presentation of evidences (probative procedure), a microfilm or electronic copy of an official document or reproduction of such a copy shall have the same validity as the document referred to in Paragraph 1 of this Article should that microfilm copy or reproduction of that copy be issued by an authority within the limits of its competencies i.e. within the public powers assigned by the law.

(4) It is permitted to prove that in the document i.e. microfilm or electronic copy of a document or reproduction of that copy facts are untruly verified or that the official document itself i.e. the microfilm copy of that document or reproduction of that copy are drawn up irregularly.

(5) It is permitted to prove that a microfilm or electronic copy of an official document i.e. reproduction of that copy do not represent a true copy of the original.

### **Article 158**

Official documents shall have probative force unlimited by time, if the legal facts (legal affairs) after their issuance cannot be changed. If any subsequent changes to the legal or factual effects may influence the contents of an official document, the official document shall

be deemed to have probative force limited by time. An authorized official may investigate whether the facts stated in an official document with probative force limited by time are true.

**Article 159**

Should an official document contain anything that is crossed out, scraped, deleted or inserted, or if there are any other external deficiencies in an official document, an authorized official shall assess whether, taking into consideration all other circumstances, the probative value of the official document in question is thereby impaired and to what extent, or whether the official document has completely lost its probative value for the purpose of deciding on the administrative matter which is the subject of the administrative procedure.

**Article 160**

(1) Documents serving as evidence shall be produced by parties or provided by the authorized authority. The party shall produce evidence in original, a microfilm or electronic copy of the document in question or reproduction of the copy or the certified transcript, but it can also produce an ordinary, uncertified transcript. When a party presents an official document as a certified transcript, an authorized official may ask the party to show the original document, but when an official document is presented as an ordinary i.e. uncertified transcript, the authorized official shall ascertain whether that transcript is a true copy of its original. A microfilm or electronic copy of an official document or reproduction of that copy issued by a competent authority as prescribed shall have in the procedure the probative value of an original document, in virtue of Article 157, Paragraph 3 of this law, for the purpose of deciding on the administrative matter which is the subject of the administrative procedure.

(2) Any information presented to the competent authority shall have validity of a produced document if such information indicates as to where in the computerized data base or records there is a relevant record, if it is about official records i.e. other records accessible to the authority.

(3) Should some facts or circumstances be already ascertained by a competent authority or should such facts or circumstances be proved at the public hearing (identity card, excerpts from the vital records etc.) the authorized authority shall take these facts and circumstances as already ascertained. When it is about acquisition or forfeiture of rights, but there is probability that these facts and circumstances have been subsequently changed, or when they have to be especially ascertained on the basis of relevant regulations, the authorized official shall request the party in question to produce special evidences regarding these facts and circumstances or the authority shall provide the same by itself.

**Article 161**

(1) An authorized official, may order the invited party to produce an official document at the hearing if such a document is in its possession or can be provided.

(2) Should the document be in possession of the adverse party, and that party is not willing to produce or present it, an authorized official may invite that party to produce or present the document at the hearing in order to enable the other party to declare itself in that respect.

(3) Should the party ordered to produce i.e. show an official document fail to proceed according to the summons, the authorized authority shall assess, regarding all other circumstances of the case, what is the impact it can have on the resolution of the administrative matter in question. In that case, the authority may impose a fine to that party for violation of procedural discipline in the amount of EUR 50, while that fine can be imposed again in the same amount i.e. until the party in question agrees to produce i.e. present its document. The party shall be permitted to lodge an appeal against the decision pronounced by which is a fine, which shall not prevent the execution of the decision.

#### **Article 162**

If the official document to be used as evidence in the procedure is kept by a competent authority, while the party who invoked that document has not succeeded in providing it, the authorized authority shall ex officio provide the document in question.

#### **Article 163**

(1) Should the official document be kept by a third person, while that person is not willing to present it, the authorized authority shall pass a decision ordering that person to present the official document in question at the hearing, in order to enable the parties to the procedure to declare themselves on the document in question.

(2) A third person may deny to present official documents from the reasons due to which a witness may deny to testify.

(3) It shall be initiated a procedure against a third person who denies with no justified reason to present official documents, in the same manner as against a person who denies to testify.

(4) A third person shall be entitled to an appeal that adjourns the execution of the decision, against the decision ordering him/her the presentation of an official document, as well as against the decision on penalty due to denial to show the document.

(5) A party invoking an official document that is kept by a third party, shall be obliged compensate the person in question for the costs incurred regarding the presentation of the document in question.

#### **Article 164**

Documents issued by foreign authorities, which in the country of issuance have validity of official documents, shall have, on conditions of reciprocity, the same probative force as domestic official documents if translated and duly certified.

#### **Article 165**

(1) Competent authorities shall issue certificates i.e. other documents on the facts for which they maintain their official records.

(2) Certificates and other documents on the facts for which official records are maintained, must be issued in conformity with the data from official records. Such certificates or other documents shall have validity of an official document.

(3) Certificates and other documents on facts for which official records are maintained shall be issued to a party on request in oral form, as a rule, the same day when a party has requested issuance of a certificate i.e. other document, but at latest 15 days of the day of submission of the request, unless otherwise provided by the regulation established by which are official records.

(4) Should the authority reject the request for issuance of a certificate or other document regarding the facts contained in the official records maintained by it, such an authority shall be obliged to pass a special conclusion in that respect. Should within the period of 15 days of submission of the request it fails either to issue a certificate or other document regarding the facts contained in the official records maintained by it or to pass and deliver to the party in question its resolution rejecting its request, the party may lodge a complaint as if its request were rejected.

(5) Should the party, on the basis of evidences disposing of, considers that the certificate in question or other document regarding facts for which official records are maintained, has not been issued in conformity with data from such records, the party may ask for changes to be made or issuance of a new certificate or other document. The authority shall be obliged to pass a special resolution if it rejects the party's request for changes or issuance of a new certificate or document. Should within the period of 15 days of submission of the request for changing or issuing a new certificate or other document, that be not done, the party in question may lodge an appeal as if its request were rejected.

#### **Article 166**

(1) Competent authorities shall also issue certificates or other documents regarding the facts for which they do not maintain official records if so provided by the law or other regulations. In that case, facts shall be ascertained within the procedure set forth by the provisions of this Chapter.

(2) Certificates or other documents issued in the manner provided by Paragraph 1 of this Article shall not oblige the authority to which it has been submitted as evidence and which has to decide on an administrative matter. That authority may proceed with ascertaining the facts stated in the certificate or other document.

(3) A certificate or other document shall be issued to a party i.e. a conclusion on rejection of a request shall be passed and delivered to a party within 30 days of submission of the request; should it be not proceeded in that manner, the party in question may lodge an appeal as if its request were rejected.

### **3. Witnesses**

#### **Article 167**

(1) A witness may be any person capable of perceiving a fact on which it has to testify and who is able to communicate such a perception.

(2) A person who participates in the administrative procedure in the capacity of an authorized official cannot be admitted as a witness.

**Article 168**

Any person who is summoned as a witness shall be obliged to respond to summons and to testify, unless otherwise provided by this law.

**Article 169**

Interrogated as a witness cannot be the person who would jeopardize by its testimony statement the duty of keeping a state, military or official secret until released of that duty by the competent authority.

**Article 170**

(1) A witness may deny testifying:

- 1) if an answer to some questions would expose to a serious infamy, considerable damage to property or criminal prosecution either him/her, his/her direct relative by blood, and in the collateral line to the third degree conclusive, his/her marital or extramarital partner or relatives by marriage to the second degree conclusive, also even when the marriage or extramarital union has ceased, as well as his/her guardian or protégé, adoptive parent or adoptive child,
- 2) if the answer to some questions would injure any obligation i.e. the right to keeping a secret from the domain of business, professional, scientific or art affairs,
- 3) about the things a party has confided to the witness as his/her proxy,
- 4) about the things a party or other person has confessed to the witness as a religious confessor,

(2) A witness may be released of the duty of testifying about other facts and circumstances, as well, when he/she presents reasons of relevance for that. If so needed, the reasons in question are to be made probable by him.

(3) A witness shall not be permitted, due to the danger of a property damage, deny to testify on legal transactions on the occasion of which he/she has been present as a witness, clerk/registrar or agent, on actions undertaken by him/her related to the disputed relationship as a legal predecessor or representative of one of the parties to the procedure, as well as on any other action which he/she is obliged in line with special regulations to report on or to make a statement.

**Article 171**

(1) Witnesses shall be interrogated individually, without presence of other witnesses to be interrogated subsequently.

(2) An interrogated witness should not leave the place without permission of the person acting in an official capacity who administers the procedure.

(3) The authorized official may interrogate again the witness already interrogated, while he/she may face the witnesses the statements of whom are not reconciled.

(4) A person who due to illness or bodily incapability cannot respond to summons, shall be interrogated in his/her own apartment i.e. house where he/she lives.

#### **Article 172**

(1) A witness must be previously warned on his/her obligation to speak the truth, that he/she should not conceal anything and that he/she may make his/her statement under oath, as well as on consequences of making a false statement.

(2) Personal particulars shall be taken from witnesses, applying the following sequence: first and family name, profession, permanent residence or temporary residence, place of birth, age, marital status. If so needed, witness shall be also interrogated about circumstances regarding his/her confession as a witness on the matter in question, especially about his/her relations towards the parties to the procedure.

(3) An authorized official shall advice witnesses about the questions on which they may deny to testify.

(4) A witness shall, thereupon, be asked about the subject matter, and shall be invited to present all that is known to him/her in that respect.

(5) It shall not be permitted to put such questions that may indicate as to what an answer should be like.

(6) A witness shall always be asked whether the things he/she is expected to testify about, are known to him/her.

#### **Article 173**

(1) Should it happen that a witness does not know the language of the procedure, he/she shall be interrogated through an official interpreter.

(2) Should it happen that a witness is deaf, questions shall be put in written form, and if he/she is mute - he/she shall be invited to answer in written form. Should interrogation be not possible in this manner, invited shall be as interpreter a person who is able to communicate with the witness.

#### **Article 174**

(1) After hearing a witness, an authorized official may decide that the witness make his statement under oath. The witness who is underage or who is unable to comprehend sufficiently the significance of an oath, shall not be asked to swear.

(2) The oath shall be taken orally by pronouncing the following wording: "I do swear hereby that I have told the truth about everything asked herewith and that I have not concealed anything in that respect".

(3) Mute witnesses who are able to read and write shall swear by affixing their signatures to the wording of the oath, while deaf witnesses shall read the wording of the oath. Should mute or deaf witnesses be unable to read and write, their oaths shall be taken through their interpreters.

#### **Article 175**

(1) Should it happen that a witness, regularly summoned up, fail to respond to summons, or fail to justify his/her non-appearance, or should he/she be removed from the place of interrogation without any permission or justified reason, the authorized authority may order that the witness in question be brought forcibly and to bear the costs incurred on that occasion, while a fine may be imposed to such a witness for violation of the procedural discipline in the amount EUR 50.00.

(2) Should it happen that a witness arrive and deny to testify with no justified reason, though warned about the consequences of such a denial, he/she can be punished again for the violation referred to in Paragraph 1 of this Article, by a fine amounting to EUR 50.00. Decision on imposition of a fine shall be passed by an authorized official, in consent with an authorized official for decision - making on the administrative matter, and when other authority is asked to proceed in that matter – in consent with the head of that authority i.e. a person acting in an official capacity who is in charge of deciding on similar matters.

(3) Should it happen that a witness justifies subsequently its non-appearance, an authorized official, shall make void the decision on the fine and pertaining costs. Should the witness give his/her subsequent consent to testify, the authorized official may make void the decision on fine.

(4) An authorized official may decide that the witness bear the costs incurred by his/her non-appearance or denial to testify.

(5) A special complaint shall be permitted against the decision on fine or costs passed pursuant to the provisions of this Article.

#### ***4. Statements by the Parties to the Procedure***

##### **Article 176**

(1) Should there exist no immediate proof for ascertainment of a specific fact or should such fact cannot be ascertained on the basis of other evidences, then for ascertainment of such a fact can also be used as a proof an orally made statement by a party to the procedure. The statement by a party may also be admitted as evidence in administrative matters of a minor significance should a specific fact be ascertained by hearing a witness living far away from the headquarters of the competent authority, or if the collection of other evidences would interfere with the exercise of rights of a party to the procedure.

(2) Authenticity of the statement by a party shall be assessed according to the principle of interrogation of the party set forth in Article 8 of this law.

(3) Prior to taking a statement by parties to the procedure, an authorized official, shall be obliged to give a warning to parties regarding their criminal and substantial liability in the case of making a false statement.

## **5. Experts**

### **Article 177**

When an expert knowledge is indispensable for ascertainment or assessment of some facts of relevance for deciding on an administrative matter, that an authorized official does not possess, the evidence shall be presented by an expert investigation.

### **Article 178**

(1) Should the presentation of evidences by expert investigation be extremely costly compared to significance or value of a subject matter, an administrative matter shall be resolved on the basis of other evidences.

(2) In case referred to in Paragraph 1 of this Article, expert investigation shall be conducted if so required by a party to the procedure and if the party agrees to bear the costs of such an expert investigation, if prolongation of the procedure would not incur any damage to the public interest and the interest of other persons.

### **Article 179**

(1) An authorized official may, for the purpose of presentation of evidences by expert investigation and ex officio or on proposal of a party to the procedure, appoint an expert, and when he/she assesses that the expert investigation is complicated, he/she may appoint two or more experts.

(2) Experts shall be persons with expert knowledge and particularly those persons who are authorized to give opinion on issues from a specific domain.

(3) The party shall, as a rule, be previously interrogated about the expert's personality.

(4) A person who cannot be a witness shall not be appointed an expert.

### **Article 180**

(1) Everyone who has adequate qualifications must accept the duty of an expert, unless freed from that duty by an authorized official, due to justified reasons such as, being too occupied by giving expert opinion, by other activities etc.

(2) Release from the duty of expert investigation may also be required by the head of a state authority, executive of an institution or manager of a legal person, entrepreneur or other private person, the expert is employed with.

### **Article 181**

(1) An expert may deny his/her expert opinion for the same reasons due to which a witness may deny to testify.

(2) An employed person shall be freed from the duty of expert investigation when he/she is released from that duty based on special regulations.

**Article 182**

(1) Provisions on challenge of persons acting in an official capacity shall apply accordingly to exemption of experts, as well.

(2) A party may ask for challenge of an expert if he/she makes probable the circumstances disputed by which is the expert's knowledge.

(3) An authorized official shall decide on the expert's challenge by passing a relevant decision.

**Article 183**

(1) Prior to commencement of expert investigation, an expert has to be warned that he/she shall be obliged to consider carefully the subject matter of expert investigation and to state precisely into his expert findings everything he/she has observed and found out, as well as to present his/her opinion supported by relevant reasons in an impartial manner and in conformity with the rules of science and expertise.

(2) An authorized official shall order the expert in respect of which facts he/she has to give his/her findings and opinion.

(3) When the expert present his/her findings and opinion, an authorized official, as well as parties to the procedure, may put questions and ask for explanations in respect to the presented findings and opinion.

(4) Provisions of Article 172 of this law shall apply accordingly to the hearing of experts.

(5) An expert shall not be obliged to take an oath.

**Article 184**

(1) An expert may be ordered to conduct expert investigation out of the oral hearing, as well. In that case, the expert may be required to give an explanation of his/her written findings and opinion.

(2) Should more than one expert be appointed, they can present together their findings and opinions.

**Article 185**

(1) Should the expert's findings and opinion be not enough clear or precise or complete or are findings and opinions of experts are essentially different, or opinions are not sufficiently explained, or should there arise any well founded suspicion, as regards accuracy of the presented opinion, but these deficiencies cannot be eliminated by rehearing of experts, expert investigation shall be repeated with the same or other experts, whereas expert investigation may be required from a scientific or a professional organization.

(2) Expert investigation by a scientific or a professional investigation may also be required due to complexity of the case in question or the need of conducting an analysis it can be

reasonably supposed that more accurate findings and opinions shall be obtained in such a manner.

**Article 186**

(1) Should the expert who has been regularly summoned fail to appear, and should he/she fail to justify such non appearance, or come but deny to testify, or when within the set time limit fails to present his/her written findings and opinion, he/she can be liable to a fine amounting to EUR 50.00 due to violation of procedural discipline. If costs have been incurred in the course of the procedure due to an unjustified non-appearance of the expert, his/her denial to testify or failure to present written findings and opinion, it can be decided that such costs are to be borne by the expert.

(2) A decision on the fine i.e. payment of costs shall be passed by an authorized official, in consent with an authorized official who is in charge of deciding on the administrative matter, and when another authority is asked to proceed in that matter – in consent with the official of that authority i.e. a person acting in an official capacity in charge of deciding on similar matters.

(3) Should it happen that an expert justifies subsequently his/her non-appearance or justifies subsequently his/her untimely presentation of his/her findings and opinion, an authorized official shall cancel the decision ordering the fine i.e. payment of costs, and should an expert subsequently agree on the conduct of expert investigation, the authorized official may cancel the decision on fine.

(4) A special complaint shall be permitted against the decision on payment of costs or fine passed pursuant to Paragraph 1 or 2 of this Article.

**6. Interpreters**

**Article 187**

Provisions of this law related to experts shall apply accordingly to interpreters.

**7. Investigation / Inquiry on the Spot**

**Article 188**

Investigation (inquiry on the spot) shall be conducted when for ascertainment of a crucial fact or explanation of essential circumstances, a direct perception by the person conducting the procedure is required.

**Article 189**

(1) Parties shall have the right to participate in the investigation (inquiry on the spot). An authorized official shall determine who shall, besides parties to the procedure, attend the inquiry on the spot.

(2) Investigation (inquiry on the spot) may be conducted with participation of experts, as well.

**Article 190**

Inquiry of the thing that can be easily brought to the place of the procedure shall be conducted in that place, but if it is impossible to bring the thing in question - the inquiry shall be conducted on the spot.

**Article 191**

(1) Owner, possessor of things, premises or land to be examined or in which the things of an inquiry are accommodated, or which has to be trespassed, shall be obliged to allow the conduct of inquiry.

(2) Should not the owner or possessor allow that inquiry on the spot be conducted, provisions of this law on denial of testimony shall be applied accordingly.

(3) Measures applied against witnesses who deny to testify (Article 175, Paragraphs 2 and 4), shall be applied accordingly against owners or possessors who unreasonably prevent the conduct of inquiry. A special appeal shall be permitted against the decision pronounced by which is such a measure.

(4) Damage incurred on the occasion of the conduct of inquiry on the spot shall represent the procedural costs and shall be compensated in favour of the owner or possessor. A decision in that respect shall be passed by the authorized authority. A special appeal shall be permitted against such a decision. An administrative procedure may not be instituted against the conclusion passed under the appeal, while the unsatisfied party may institute proceedings for compensation of damage before a competent court.

**Article 192**

An authorized official shall take care that inquiry is not abused and that somebody's business, professional, scientific or art secret be violated.

**8. Collection of Evidences**

**Article 193**

(1) Should there exist any reasonable doubt that presentation of certain evidence shall be made hardly possible or shall be difficult; the evidence in question may be presented, for the purpose of collection of evidences, at any stage of the procedure, even before the procedure is instituted.

(2) Collection of evidences shall be conducted ex officio or on proposal of the party to the procedure i.e. a person who has a legal interest.

**Article 194**

(1) The authorized authority shall be responsible for collection of evidences.

(2) For collection of evidences prior to the institution of the procedure, responsible shall be the authority in the territory of which things are situated to be examined i.e. in the territory of which persons stay that have to be interrogated.

**Article 195**

- (1) Collection of evidences shall be accompanied by a special conclusion.
- (2) A special appeal shall be permitted against the conclusion denied by which is the proposal for collection of evidences. Such an appeal shall not interrupt the administrative procedure.

**Chapter XII**  
**DECISION**

***1. Authority Competent to Issue a Decision***

**Article 196**

- (1) The authority competent for decision-making shall issue a decision on administrative matter that is subject of the procedure based on decisive facts determined in course of the procedure.
- (2) In cases where a collegial authority makes a decision on the administrative matter, it shall proceed with issuing a decision in presence of majority of its members whereas the decision shall be issued by majority vote unless the law or other regulations provide a specific definition of qualified majority.

**Article 197**

When the law or other regulations stipulate that two or more authorities may issue a decision regarding certain matter, each of the respective authorities shall decide on the matter. Those authorities shall come to an agreement as to which one of them shall be responsible for issuing a decision and in such decision a reference to other authorities' acts shall be made.

**Article 198**

- (1) In cases where the law or other regulations stipulate that certain authority may issue a decision only with prior consent of another authority, the decision may be issued only upon acquiring such consent. The authority responsible for issuing the decision shall include in its decision a reference to the document by which the other authority provided its consent.
- (2) In cases where the law or other regulations stipulate that an authority competent for issuing a decision needs another authority's consent to it, the authority responsible for issuing the decision shall draft the decision and submit it, together with a complete set of supporting documents, to the other authority which may record certification of its consent on the submitted document or may issue a separate act. In this case it shall be considered that the decision is issued when the other authority consents to it and such decision is considered an act of the authority that passes i.e. issues it.
- (3) Provision of paragraph 2 of this Article shall also apply in cases where the law or other regulations stipulate that the decision is issued by one authority with the certification or approval from another authority.

- (4) In cases where the law or other regulations stipulate that the competent authority is required to obtain an opinion from another authority prior to issuing a decision, the decision shall be issued upon obtaining such opinion.
- (5) The authority responsible for giving consent or providing an opinion required in order to issue a decision shall give its consent i.e. opinion within one month from the date the request has been made unless the deadline is otherwise defined by other regulations. If this authority fails to give or deny its consent to the authority responsible for issuing the decision within the given deadline, such consent shall be deemed given and if it fails to provide an opinion, the competent authority may issue the decision without obtaining such opinion unless otherwise stipulated by other regulations.

#### **Article 199**

If the person authorized to conduct the procedure is not authorized to issue a decision, this person shall submit a draft decision to the authority responsible for issuing it. This person shall initial the draft decision.

### ***2. Form and Components of a Decision***

#### **Article 200**

- (1) Each decision shall have a reference number as such. In particular cases, special regulations may determine that decisions may be given another title.
- (2) Decision shall be issued in written form. In particular cases stipulated by this law, decision may be given in verbal form.
- (3) Written decision shall contain: introduction, disposition (statement), exposition, instruction on legal remedy, authority's title and number and date of the decision, authorized person's signature and authority's stamp. If the decision is issued in electronic form it shall have an encrypted electronic signature. In certain cases defined by the law or other regulations the decision shall not contain some of those items. If the decision is processed mechanically, it shall contain facsimile instead of signature and stamp.
- (4) If the decision is pronounced verbally, it shall also be issued in writing unless otherwise stipulated by the law or other regulations. Such written decision shall correspond in all aspects to the previously pronounced verbal decision.
- (5) The original of the decision or a certified copy of the decision shall be delivered to the party.
- (6) Written decision is considered issued when delivered to the party (delivered to the last one of the parties in cases where there is more than one party), whereas verbal decision is considered pronounced when pronounced to the party in party's language.

#### **Article 201**

- (1) The introduction of a decision shall contain: title of the authority that issues decision, regulation defining the authority's competence, name of the party and its legal or

authorized representative, if appointed by the party, and a brief description of the matter of procedure.

- (2) If a decision is issued by two or more authorities or if it is issued with consent of two or more authorities, this shall be indicated in the introduction; if the decision is issued by a collegial authority, the date of its meeting related to deciding on the subject matter shall be indicated in the introduction.

#### **Article 202**

- (1) The disposition shall include decisions on the matter of procedure as well as on all requests of interested parties that have not been separately resolved in the course of procedure.
- (2) The disposition may define a condition that needs to be fulfilled prior to acquiring rights granted by the decision.
- (3) In cases where certain actions are ordered by the decision, deadline for performing such actions shall be defined in the disposition.
- (4) In cases where an appeal cannot delay execution of decision this shall be indicated in the disposition.
- (5) Disposition can also include a decision on legal costs, if incurred, and determine the amount, the party responsible for covering such costs, the party that receives the payment and the deadlines for payment. If disposition does not decide on costs it shall state that a separate decision shall be made regarding this matter.
- (6) Disposition shall be brief and specific, and if necessary it may be presented in separate points.

#### **Article 203**

- (1) In simple administrative matters where only one party is involved as well as in simple administrative matters where two or more parties are involved but none of them objects to the request made and such request is accepted, exposition of the decision may contain only a brief statement of party's request and reference to material regulations based on which the administrative matter is resolved. In such cases the decision may be issued on an approved form.
- (2) In cases of other administrative matters, exposition of decision shall contain: brief statement of parties' requests, establishment of facts, reasons that were decisive in assessment of evidence, if necessary, reasons for which certain requests of certain parties have not been considered, material regulations and reason which, considering the present facts, lead to the decision presented in disposition. In cases where an appeal cannot delay execution of decision, exposition shall also contain reference to regulation that defines such situation. Exposition of decision shall also contain justification of those decisions against which no special appeal can be filed.
- (3) In cases where the competent authority is authorized to decide upon an administrative matter at its own discretion, exposition shall state, beside data listed in paragraph 2 of this

Article, the regulation that defines such situation and it shall present reasons that guided it in issuing the decision. The authority shall also state in exposition the extent to which it used discretionary power as well as the objective met by such procedure.

#### **Article 204**

- (1) Instruction on legal remedy shall provide information to the party about its options regarding filing an appeal or instituting an administrative or other procedure in court.
- (2) In cases where an appeal may be filed against the decision, the instruction shall state the authority to which such appeal should be submitted as well as deadline for filing an appeal, number of copies and fees payable for submission, and it shall also state that the appeal may also be filed against the record.
- (3) In cases where an administrative or other legal procedure can be instituted against the decision, the instruction shall state the court to which such a complaint should be submitted as well as number of copies and deadline for submission.
- (4) In cases where the decision contains incorrect instruction, party may act in accordance with relevant regulations or in accordance with the instruction given. Party that acts in accordance with incorrect instruction shall not suffer negative consequences of such action.
- (5) In cases where the decision contains no instruction or contains incomplete instruction, party may act in accordance with relevant regulations and it may also request the authority to amend the decision whereas the deadline for such request shall be eight days from the date of delivery of the decision.
- (6) In cases where an appeal may be filed against the decision but the party is incorrectly instructed that no appeal may be filed against such decision and it is also incorrectly instructed that an administrative procedure may be instituted against the decision, the deadline for filing an appeal shall start from the date of delivery of the administrative act by which the party's complaint has been found illegitimate and therefore refuted, unless the party has already filed an appeal to the competent authority.
- (7) In cases where an appeal may not be filed against the decision but the party is incorrectly instructed that such appeal may be filed and proceeds with filing it, therefore missing the deadline for instituting administrative procedure, the deadline for instituting administrative procedure shall start from the date of delivery of the decision refuting the appeal, unless the party has already requested institution of the administrative procedure.
- (8) Instruction on legal remedy, as a separate part of the decision, shall be placed after exposition, on the left hand side.

#### **Article 205**

- (1) The decision shall be signed by an authorized official competent for issuing it.
- (2) Decision issued by a collegial authority shall be signed by the chairperson unless otherwise stipulated by the law or other regulations.

- (3) In cases where collegial authority issues a complete decision all parties shall receive certified copy of the decision and in cases where collegial authority decides on administrative matter in form of a conclusion, the decision shall be drafted in accordance with such conclusion. Certified copy of the decision shall be delivered to all parties.

#### **Article 206**

- (1) If an administrative matter involves a number of persons, all of whom are familiar to the authority, a single decision may be issued for all persons whereas names of all those persons shall be stated in disposition and the reasons relating to each one of them shall be stated in exposition. Such decision shall be delivered to each person except in cases defined in Article 80 of this Law.
- (2) If an administrative matter involves a number of persons not familiar to the authority, a single decision may be issued for all persons but it must contain data clearly identifying persons the decision relates to (for example: citizens or owners of real estate in particular street and similar cases).

#### **Article 207**

- (1) In administrative matters of lesser importance where party's request is granted and the public interest or third party's interest remain unaffected by that, the decision may contain only disposition in form of a record in the documents of the matter provided that reasons for such action are evident and that there are no other relevant regulations.
- (2) Decision referred to in paragraph 1 of this Article, as a rule, shall be verbally pronounced and a written decision shall be issued on party's request.
- (3) Decision referred to in paragraph 1 of this Article, as a rule, shall not contain exposition unless it is required by nature of matter. Such decision may be issued on an official form.

#### **Article 208**

- (1) In cases of undertaking extremely urgent measures for maintenance of order and public safety or elimination of direct threats to people's lives and properties, the authority may issue a verbal decision.
- (2) Authority that issues verbal decision referred to in paragraph 1 of this Article may order execution of such decision without any delay.
- (3) Authority that issues verbal decision shall issue such decision in written form on party's request and within 8 days from submission of such request. Such request may be submitted within two months from the date of issuing of the verbal decision.

### ***3. Partial, Supplementary and Temporary Decision***

#### **Article 209**

- (1) In cases where an administrative matter involves decision on a number of issues whereas only some of them are ready to be considered for decision and when issuing a separate

decision regarding these issues is proved to serve the purpose, the authority may issue a decision related to those issues only (partial decision).

- (2) Partial decision shall be considered independent in terms of legal remedies and execution.

#### **Article 210**

- (1) In cases where the authority fails to issue a decision related to all issues covered by the procedure the authority may, based on party's proposal or ex officio, issue a separate decision (supplementary decision) related to issues still pending following previous decision. If the party's proposal for issuing supplementary decision is rejected it may file a special appeal against such decision.
- (2) In cases where it is considered that a matter has been sufficiently addressed, supplementary decision may be issued without re-conducting separate examining procedure
- (3) Supplementary decision shall be considered independent in terms of legal remedies and execution.

#### **Article 211**

- (1) In cases where circumstances indicate that there is a need to issue an decision in order to temporarily settle relations or matters at issue prior to completion of the procedure, such decision shall be issued based on information available at the point when it is being issued. It shall be clearly indicated in the decision that it is considered to be a temporary decision.
- (2) As a condition for issuing a temporary decision based on party's proposal, the authority may request provision of guaranties for damages that may be caused to the opposite party by execution of such decision in case that the primary request of party proposing temporary decision is not granted in the end.
- (3) Decision on head matter issued upon completion of the procedure shall nullify the temporary decision issued during the course of the procedure.
- (4) Temporary decision is considered independent in terms of legal remedies and execution

#### ***4. Deadline for Issuance of Decision***

##### **Article 212**

- (1) In cases where the procedure is instituted on party's request i.e. ex officio if that proves to be in party's interest, and where there is no need to conduct a separate examining procedure and there are no reasons whatsoever that prevent issuing of a decision without delay (deciding on prior issue or other), the authority shall issue a decision and deliver it to the party as soon as possible and not later than one month after the submission of proper request i.e. one month from the date of commencement of procedure ex officio, unless a shorter deadline is stipulated by the law. In rest of the cases where the procedure is instituted on party's request i.e. when it is instituted ex officio if that proves to be in party's interest, the competent authority shall issue a decision and deliver it to the party within two months unless a shorter deadline is stipulated by the law.

- (2) In case that the authority whose decisions are subject to appeal fails to issue a decision and deliver it to the party within determined deadline, the party shall have the right to lodge an appeal on the presumption that its request has been refused. In case that the party is not permitted to lodge an appeal, the party may institute an administrative dispute before a competent court in accordance with law that regulates administrative dispute.

## ***5. Correction of Mistakes in Decision***

### **Article 213**

- (1) Authority competent for issuing a decision i.e. person authorized to sign or issue a decision, may at any time correct mistakes in names or figures, text or calculations as well as other obvious incorrect items in the decision or certified copies of the decision. In cases where the decision is to the benefit of the party, correction of mistakes shall have legal effect from the same date as the decision containing correction. In case that the decision is not to the benefit of the party, correction of mistakes shall have legal power from the date of issuance and delivery of conclusion of correction.
- (2) A separate conclusion concerning correction shall be issued. A notice of correction shall be recorded on the original decisions and, when possible, on all certified copies delivered to parties. The notice shall be signed by the same authorized person that signs conclusion of correction.
- (3) A special appeal may be filed against a conclusion of correction of previously issued decision or against a decision of rejection of proposal for correction.

## ***6. Final and Law-binding Decisions***

### **Article 214**

- (1) Decision is considered to be final when it cannot be disputed by an appeal. Once the final legal effect takes place, the party may claim its rights unless otherwise stipulated by the law.

### **Article 215**

- (1) Legally binding decision is a decision that cannot be disputed through an administrative procedure or any other legal procedure and as such grants certain rights or legal interests to the party or imposes certain obligations on the party.
- (2) In cases where an appeal, i.e. complaint is lodged against particular parts of disposition in a decision in order to dispute such parts, the remaining parts that are not subjects of the appeal, i.e. complaint and are not dependable on, the other parts of disposition shall become legally binding upon fulfilment of condition referred to in paragraph 1 of this Article.
- (3) In cases where a decision is disputed through administrative dispute or other legal procedure but is not nullified or overruled by an administrative act, such decision shall become legally binding when the court decision on legality of the decision becomes legally binding.

- (4) Legally binding decision may be annulled, overruled or amended only by virtue of extraordinary legal remedies defined by the law.
- (5) In cases where a decision is a matter of public interest, a certificate of finality i.e. legal enforceability of such decision shall be issued by the authority conducting the procedure, on party's or public authority's request,
- (6) In accordance with this law it is allowed to correct a certificate of finality i.e. legal enforceability if it has been issued in an incorrect manner.

### **Chapter XIII CONCLUSION**

#### **Article 216**

- (1) The conclusion shall define issues that are subject of the procedure.
- (2) The conclusion shall also define issues that arise as side questions related to conduction of the procedure and are not covered in the decision.

#### **Article 217**

- (1) The conclusion shall be issued by an authorized official competent for conducting a particular action of the procedure in the course of which that particular issue arises, unless otherwise stipulated by the law.
- (2) In case that the conclusion orders performance of a certain action, deadline for such action shall be determined.
- (3) The conclusion shall be verbally communicated to interested parties and it shall be issued in writing on the request of the party having right to file a special appeal against the conclusion as well as in cases where there is a possibility of immediate execution of the conclusion.

#### **Article 218**

- (1) A special appeal may be filed against the conclusion only in cases clearly defined by the law. Such a conclusion shall be justified and shall contain instruction on appeals.
- (2) An appeal against a conclusion is lodged within same deadline, in same manner and to the same authority as the appeal against a decision.
- (3) Conclusion against which no separate appeal is allowed may be nullified by an appeal against the decision lodged by interested parties and other persons having legal interest except in cases where appeal against conclusion is not permitted by this law.
- (4) Appeal shall not delay execution of a conclusion, unless otherwise stipulated by the law or

the conclusion itself.

**PART THREE**  
**LEGAL REMEDIES**  
**Chapter XIV**  
**APPEAL**

***1. Right to Lodge an Appeal***

**Article 219**

- (1) A party may lodge an appeal against first instance decision.
- (2) An appeal may also be lodged by a person who was not given the opportunity to participate in the procedure of first instance provided that the decision affects his or her rights and legal interests (interested person). If such person requests that the decision be delivered to him/her within the deadline approved for filing an appeal by a party, such person has the right to file an appeal within the deadline for issuing a decision on party's appeal.
- (3) State prosecutor and other state authorities, provided that they are authorized by law, may lodge an appeal against a decision if it represents violation of law and is to the benefit of private or legal person at the expense of public interest.

**Article 220**

- (1) An appeal may be lodged against a first instance decision issued by a ministry only in cases defined by the law and in cases of matters for which no administrative dispute may be instituted.
- (2) An appeal may be lodged against a first instance decision issued by an administrative authority, local self-government authority, institution or other legal persons holding public authority.
- (3) No appeal may be lodged against decision issued by the Government.

***2. Competence of Authorities in Decision-Making on Appeals***

**Article 221**

- (1) In cases where it is permitted to lodge an appeal against ministry's and administrative authority's first instance decision issued by an organizational unit established for performance of certain administrative tasks, such appeal shall be decided on by the respective ministry or another administrative authority.
- (2) In case of an appeal against first instance decision issued by administrative authority, local

self-government authority, institution or other legal person holding public authority, such appeal shall be decided on by the respective supervisory authority.

#### **Article 222**

- (1) An appeal against a decision issued in accordance with Article 197 or Article 198 of this law shall be decided on by an authority competent for decision-making on appeals against decisions of the authority that decided on (article 197) or issued (Article 198) the decision in dispute, unless special regulations stipulate that a different authority is competent to decide on the appeal.
- (2) In cases defined in paragraph 1 of this Article a second instance authority may only nullify the decision in dispute but is not permitted to amend such decision.
- (3) In case that the authority competent to decide on the appeal in accordance with paragraph 1 of this Article consents, approves or certifies the first instance decision, the appeal shall be decided by an authority defined by the law and, if such authority is not defined, the first instance decision shall be considered final.

#### **Article 223**

In cases of appeals against decisions issued by institutions or other legal person having public authority where no competent second instance authority or supervisory authority is defined, the appeal shall be decided on by the authority competent for the respective administrative area.

### ***3. Deadline for Appeal***

#### **Article 224**

The appeal shall be lodged within 15 days from the date of delivery of decision unless otherwise stipulated by the law.

#### **Article 225**

- (1) The decision shall not be executed during the deadline for lodging an appeal. In cases where the appeal is lodged in a proper manner, the decision shall not be executed until the decision on appeal has been delivered to the party.
- (2) In special circumstances, provided that it is permitted by law, the decision may be executed during the deadline for lodging an appeal as well as after submission of an appeal in cases of need for urgent measures (Article 133 paragraph 1 point 4) or in cases where delay of execution might cause irremediable damages to a party. In the latter, it is permitted to request adequate guarantees from the party having interest in the execution and make provision of such guarantees a condition for execution.

#### ***4. Reasons for Disputing Decisions by Appeal***

##### **Article 226**

- (1) A decision may be disputed by an appeal in case of:
  - 1) violation of rules of procedure,
  - 2) incomplete or incorrect establishment of facts,
  - 3) incorrect application of material law.
  
- (2) Major violations of rules for administrative procedure exist in case that:
  - 1) the decision is issued by a truly incompetent authority
  - 2) the person that was supposed to participate as a party or interested person, was not given the opportunity to participate in the procedure;
  - 3) the party or interested person was not given the opportunity to make a declaration on all facts and circumstances essential to issuing a decision;
  - 4) the party was not represented by a legal representative i.e. if the authorized representative did not hold a power of attorney;
  - 5) the provisions of this law related to the language were violated;
  - 6) a person which, by this law, should have been exempted from participating in this procedure or decision-making process or a person that does not meet requirements for conducting a procedure or issuing decision did take part in the process;
  - 7) if disposition of a decision is contradictory to its exposition, thus making it impossible to determine legality in the procedure of appeal.

#### ***5. Contents of Appeal***

##### **Article 227**

- (1) The appeal shall state the decision against which it is lodged and cite the title of the authority that issued the decision as well as the number and the date of the decision. It is sufficient that the appellant states the reasons for lodging an appeal that is in which way he or she is unsatisfied with the decision; it is not required from the appellant to explain the appeal in detail.
  
- (2) The appeal may present new facts and new evidence, but the appellant is required to justify the reasons for not being able to present such facts and evidence during first instance procedure.
  
- (3) In case where the appeal presents new facts and evidence and the procedure involves two or more parties that have opposed interests, the appeal shall be submitted in a number of copies corresponding to number of all parties involved. In that case the authority shall deliver a copy to each party and define deadline for all parties' declaration regarding new facts and evidence. This deadline shall be not less than 8 and not more than 15 days from the date of delivery.

#### ***6. Submission of Appeal***

##### **Article 228**

- (1) The appeal shall be submitted by hand or mail to the authority that issued the first instance decision.

- (2) In case that the appeal is submitted or sent directly to second instance authority, the second instance authority shall immediately forward it to first instance authority.
- (3) The appeal submitted or sent directly to the second instance authority shall be considered as submitted to the first instance authority in terms of deadline.

#### ***7. First Instance Authority's Action on Appeal***

##### **Article 229**

- (1) First instance authority shall examine the appeal to determine that it is allowed and that it is lodged in timely manner and by an authorized person.
- (2) The appeal that is not permitted and is lodged untimely and by an authorized person shall be rejected by the first instance authority by a conclusion.
- (3) In case that the appeal is delivered or sent directly to a second instance authority, the first instance authority shall decide whether it is submitted in timely manner based on the date it is delivered or sent to the second instance authority.
- (4) A special appeal may be lodged against the conclusion rejecting the appeal in accordance with paragraph 2 of this Article. In case that the authority competent for deciding on the appeal finds that this special appeal is legitimate, it shall also decide on the previously rejected appeal at the same time.

##### **Article 230**

- (1) If the authority, which has issued first instance decision, finds that there are grounds for an appeal, and it is not necessary to execute new examining procedure, it may solve the matter differently and issue a new decision that nullifies the previous one.
- (2) The party has the right of appeal against the decision from paragraph 1 of this Article.

##### **Article 231**

- (1) In case that the authority which issued the first instance decision finds when contesting the appeal that the executed procedure was incomplete and that this could have had an influence on deciding on the administrative matter, it may amend the procedure in compliance with the provisions of this Law.
- (2) The authority which has issued first instance decision shall also amend the procedure if the appellant presents facts and evidence in the appeal which could have influenced a different solution of an administrative matter provided that the appellant should have been given the opportunity to participate in the procedure prior to issuing the decision and such possibility was not granted to him or her or it was granted but he or she failed to use it which was justified in his or her appeal.

- (3) According to the result of the additional procedure, the authority that issued first instance decision may, within the limits of a party's demand, decide on the administrative matter differently and replace it by new decision which nullifies the previous one.
- (4) A party has the right of appeal against the decision from paragraph 3 of this Article.

#### **Article 232**

When the decision is issued without prior special examining procedure in case where it was compulsory, or when the decision is issued pursuant to Article 133, paragraph 1, point 1, 2 and 3 of this Law and the party was not granted a possibility to declare itself on the facts and circumstances important for issuing the decision, the party may require execution of a special examining procedure in its appeal, i.e. it may require to be given a possibility to declare itself on those facts and circumstances in which case a first instance authority shall execute such procedure. Upon executing the procedure, a first instance authority may acknowledge the request from the appeal and issue a new decision.

#### **Article 233**

- (1) When an authority which issued a first instance decision finds that the submitted appeal is permitted and that it is lodged in timely manner and by an authorized person, fails to replace the decision against which the appeal is lodged with a new decision, it shall, without any delay and not later than 15 days from the day the appeal is submitted, forward the appeal to the authority competent for deciding on appeals.
- (2) A first instance authority shall enclose all documents relating to the matter of appeal pursuant to paragraph 1 of this Article.
- (3) If a first instance authority does not submit the documents related to the matter to the second instance authority within the period defined in paragraph 1 of this Article, the second instance authority shall request the first instance authority to submit all related documents and shall set a deadline respectively. The second instance authority may decide on the administrative matter even without the related documents.

### ***8. Second Instance Authority Competent for Deciding on Appeals***

#### **Article 234**

- (1) If an appeal is not permitted, untimely or lodged by an unauthorized person, and a first instance authority fails to reject it based on those reasons, the authority competent for deciding on the appeals shall reject it.
- (2) If a second instance authority fails to reject the appeal, it shall proceed with issuing decision on the matter.
- (3) A second instance authority may overrule the appeal, nullify the decision as a whole or partially, or amend it.

**Article 235**

- (1) A second instance authority shall refuse an appeal when it determines that the procedure prior to the decision was executed correctly and in accordance with the law whereas the appeal is devoid of merit.
- (2) An second instance authority shall also refuse an appeal when it finds that there were shortcomings in the first instance procedures but that such shortcomings could not have had influence on issuing an decision on the administrative matter, and that they represent no serious violation of the rules of procedure from Article 226 of this Law.
- (3) When a second instance authority finds that first instance decision is based on the provisions of the Law but for reasons other than the ones stated in the decision, it shall state such reasons in its decision, and refuse the appeal.

**Article 236**

- (1) If a second instance authority determines that there were irregularities in the first instance procedure that make the decision null and void, it shall declare such a decision null and void, as well as the part of the procedure conducted after determination of the irregularity.
- (2) If a second instance authority determines that a truly incompetent authority issued first instance decision, it shall nullify that decision ex officio and forward the matter to the competent authority.
- (3) If a second instance authority determines that there were serious violations of rules of procedure from Article 226, paragraph 2 of this Law, it shall nullify that decision based on the appeal, that is, ex officio and return the matter to the first instance authority for retrial, except in the case defined by Article 226, paragraph 2, point 3 in which it shall decide on the matter by itself and do so by removing all serious violations of the rules of procedure.

**Article 237**

- (1) When a second instance authority finds that a first instance procedure did not follow the rules of procedure that apply on issuing a decision on the matter but that there were no serious violations of rules of procedure from Article 226 of this Law, it shall amend the procedure and remove the stated shortcomings by itself or through a first instance authority or another authority requested to intervene. If a second instance authority finds that, based on the facts stated in the amended procedure, there is a need to issue an decision on the administrative matter different from the one issued by the first instance authority, the second instance authority shall nullify the first instance decision by its own decision and resolve the administrative matter by itself.
- (2) If a second instance authority finds that a first instance authority can remove the shortcomings of the first instance procedure in a faster and more economical manner, it shall nullify the first instance decision and return the case to a first instance authority for retrial. In such case, the second instance authority's decision shall include instruction for amending the decision by the first instance authority whereas the first instance authority shall fully comply with the second instance decision and issue a new decision, without any delay and not later than 30 days from the day of receipt. The party has the right to lodge an appeal against the new decision.

**Article 238**

- (1) If a second instance authority finds that a first instance decision erroneously assessed the evidence, that it drew wrong conclusions out of the facts in establishing the facts related to the subject matter, that the legal regulations for issuing an decision on the administrative matter have been incorrectly applied, or if it finds that based on the free assessment a different decision should have been made, it shall nullify the first instance decision and replace it with its decision thus resolving the matter by itself.
- (2) If a second instance authority finds that the decision was issued in a correct manner with respect to the established facts and also with respect to the provisions of the law, but that the same goal can be achieved by other means favourable for the party, it shall amend a first instance decision in that sense.

**Article 239**

- (1) When deciding on an appeal, a second instance authority may change first instance decision in favour of the appellant not based on the request made in the appeal but within the requests set forth in the first instance procedure provided that this does not violate the right of a third persons.
- (2) A second instance authority may change a first instance decision to the appellant's disadvantage but only for reasons defined in Article 257, 259 and 260 of this Law.

**Article 240**

- (1) Provisions of this law that relate to a first instance decision shall also apply accordingly to the decisions issued on an appeal.
- (2) The exposition of the second instance decision shall address all allegations presented in the appeal.

***9. Appeal When First Instance Decision is Not Issued***

**Article 241**

- (1) If an appeal is lodged by a party because a first instance authority has not issued a decision in the prescribed period (Article 212, paragraph 2), the second instance authority shall request the first instance authority to state the reasons for which it failed to issue a decision in the prescribed period. If the second instance authority finds that the decision was not issued due to justified reasons, or due to party's failure to act, it shall set a deadline of not more than one month for issuance of a decision by the first instance authority. If the reasons for not issuing the decision within the prescribed period are not justified, the second instance authority shall request from the first instance authority to submit to it all documents relevant to the subject matter.
- (2) If a second instance authority can decide on the administrative matter according to the relevant documents it shall issue its decision, and if it cannot, it shall conduct the procedure by itself and issue its own decision on the administrative matter. In exceptional circumstances, if a second instance authority finds that a first instance authority would

conduct the procedure in a faster and more economical manner, it shall order the first instance authority to conduct the procedure and submit all the acquired data to the second instance authority within given deadline, after which the second instance authority shall resolve the administrative matter by itself. Such decision shall be considered final.

#### ***10. Period for Issuing Decision on Appeal***

##### **Article 242**

- (1) A decision on an appeal shall be issued and submitted to the party as soon as possible and at the latest two months from the day it was lodged, unless a special law stipulates shorter deadline.
- (2) If a party abandons an appeal, the procedure is stopped with a conclusion against which the appeal is not permitted. An administrative dispute against such conclusion may immediately be initiated before the competent court.

#### ***11. Submission of Second Instance Decision***

##### **Article 243**

The authority that issued a second instance decision, as a rule, shall forward the decision with all supporting documents to a first instance authority, which shall deliver it to the parties within 8 days from the day of the receipt of documents.

## **Chapter XV RETRIAL OF THE PROCEDURE**

#### ***1. Instituting Retrial***

##### **Article 244**

A procedure concluded by a decision against which there is no regular legal remedy in the procedure (final decision) shall be retried:

- (1) If there is new evidence or if there is a possibility to use new evidence which, by itself or in connection to already stated and used evidence, could have lead to a issuance of a different decision had such facts, that is, evidence been stated or used in the earlier procedure;
- (2) If a decision was issued based on the false personal identification document or false statement of a witness or a court expert, or if it came as a result of an action sanctioned by the Criminal Procedure Law;
- (3) If a decision is based on administrative act on criminal or commercial offence procedure, and such act is validly cancelled;
- (4) If a decision favourable for a party was based on untruthful statements of the party which misled the authority that conducted the procedure;
- (5) If a decision of the authority who run the procedure is based on some previous issue, and a competent authority resolved that issue much differently;
- (6) If an authorized official, who had to be exempt in accordance with the law, was involved in issuing the decision;
- (7) If the decision was issued by an authorized official not authorized to issue the

decision;

- (8) If a collegial authority that issued the decision did not consider it in full complement pursuant to the existing regulations or if the prescribed majority did not vote for the decision;
- (9) If a person who was supposed to take part as a party, that is, an interested party was not given a possibility to participate in the procedure, provided that it is not one of the cases defined from Article 219, item 2 of this Law;
- (10) If a party was not represented by a legal representative, but by law it should have been represented;

#### **Article 245**

- (1) Retrial may be requested by the party as well as instituted, ex officio, by the authority that issued the decision ending the procedure.
- (2) In circumstances defined in Article 244, paragraph 1,6,7,8 and 11 of this Law, a party may request retrial only if, due to no fault of its own, in earlier procedure the party was not in the position to state the circumstances due to which retrial is requested;
- (3) A party cannot request a retrial for reasons defined in Article 244, point 6 to 11 of this law if such a reason was unsuccessfully stated in the earlier procedure.
- (4) The State Prosecutor may request retrial under the same conditions that apply to the party.

#### **Article 246**

If a decision, according to which a retrial is requested, was a subject of an administrative dispute, retrial may be permitted only due to the facts that had been established by the authority in the earlier procedure, and not because of those established by the court in its procedure.

#### **Article 247**

- (1) A party may request a retrial within one month period, in line with the following:
  - 1) Pursuant to Article 244, point 1-from the day when new facts could be stated, that is new evidence could be used;
  - 2) Pursuant to Article 244, point 2 and 3-from the day when it was found out about valid administrative act on the criminal or commercial offence procedure, and if the procedure cannot be instituted-from the day it was found out the procedure was terminated or from the day it was found about the circumstances because of which the procedure cannot be instituted, that is the circumstances because of which there is no possibility of criminal procedure, that is commercial offence procedure;
  - 3) Pursuant to Article 244, point 5-from the day it was possible to use new regulation (decision, ruling);
  - 4) Pursuant to Article 244, point 4,6,7 and 8-from the day the reason for retrial was found out;

- 5) Pursuant to Article 244, point 9 and 10-from the day when the decision was submitted to a party;
- (2) If the deadline prescribed in paragraph 1 of this Article starts running before the decision become final, that period shall start from the day when the decision becomes final, that is from the day of submission of the final decision issued by the competent authority.
- (3) Deadline defined in paragraph 1 of this Article shall also be binding for an authority that initiates a retrial ex officio.
- (4) After expiration of the period of five years from the date the decision was delivered to a party, that is, to an interested person, no retrial or administrative procedure may be requested or instituted ex officio.
- (5) A retrial can be exceptionally requested, that is instituted even after the period of five years only for reasons defined in Article 244, point 2, 3 and 5 of this Law.

#### **Article 248**

- (1) The procedure can be repeated for reasons defined in Article 244, point 2 even in cases that a criminal procedure cannot be instituted and that there are circumstances that prevent institution of a procedure.
- (2) Before the decision of retrial is made based on reasons stated in Article 244, point 2 of this Law, an authorized person shall request the authority competent for criminal prosecution to provide information on whether the criminal procedure was terminated, that is whether there are circumstances because of which that procedure cannot be instituted. The authorized person does not have to request such explanation if the criminal prosecution became out of date, if the person held responsible in the request for retrial is deceased or if the authorized person is the only person capable to determine with certainty the circumstances due to which the criminal procedure cannot be instituted.

#### **Article 249**

A party shall be responsible to prove the probability of circumstances that the request for retrial is based on, as well as the probability of circumstances that the request is made within the legal period.

### ***2. Deciding on Retrial***

#### **Article 250**

- (1) A party shall submit by hand or by mail its request for retrial to the authority competent to decide on the matter in the first instance, or to the authority that issues a final decision.
- (2) Authority that issues the final decision shall consider the request for retrial.

- (3) When the retrial is requested for a second instance decision, a first instance authority that accepts the request for retrial shall attach the supporting documents to the request and submit complete documentation to the authority that issues the decision in the second instance.

#### **Article 251**

- (1) When the authority competent for considering the request for retrial accepts it, it shall examine whether such request was submitted in timely manner and by an authorized person and whether the circumstances that the request is based on are proved probable.
- (2) If the conditions defined in paragraph 1 of this Article are not fulfilled, the authority shall issue a conclusion rejecting the request for retrial.
- (3) If the conditions defined in paragraph 1 of this Article are fulfilled, the authority shall examine whether the circumstances, that is, the evidences that are stated as a reason for retrial are such that they could lead to a different decision, and if the authority determines that they could not, it shall refuse the request by passing a decision.

#### **Article 252**

- (1) If an authority fails to reject or refuse the request for retrial in line with the Article 251 of the Law, it shall make a conclusion to permit the retrial and it shall determine to what extent the procedure will be retried. When retrial is conducted ex officio, the authority shall pass a conclusion that permits the retrial provided that legal conditions for retrial have been previously met. Earlier actions in the procedure that are not affected by the reasons for retrial shall not be repeated.
- (2) If the circumstances of the matter permit, and if it is in the best interest of expeditiousness of the matter, a competent authority may, as soon as it determines the existence of the conditions for retrial, move to those procedure actions that need to be repeated, without issuing a special conclusion that permits the retrial.
- (3) When a second instance authority decides on the request for retrial, it shall execute all necessary actions in the retrial by itself, and in exceptional cases, if it finds that those actions will be done more quickly and economically by a first instance authority, it shall order that authority to do so and to return the material within a given deadline.

#### **Article 253**

Based on the acquired information on the earlier and retried procedure, an authority shall issues a decision on an administrative matter which was the subject of the procedure, and the decision which was the subject of the retrial procedure may be declared still valid or replaced with the new one. In case that, considering all facts and circumstances, the decision is replaced by a new one, the authority reserves the right to nullify or cancel the former decision.

#### **Article 254**

- (1) An appeal may be lodged against the decision, that is, the decision, which rejects or refuses the request for retrial, as well as against the decision issued in the retried procedure; the appeal can be lodged only if such conclusion or decision was issued by a first instance authority. In case that the conclusion or decision was issued by the second instance authority, an administrative dispute may be instituted immediately.
- (2) No appeal may be lodged against the decision that permits the retrial.

#### **Article 255**

- (1) The request for retrial, as a rule, shall not postpone the execution of decision because of which a retrial is requested but the authority competent for deciding on the request for retrial, provided that there are sufficient grounds for presuming acceptance of such request, may issue the decision to postpone the execution until decision on retrial is issued.
- (2) The conclusion that permits retrial shall delay the execution of the decision against which the retrial was granted.

### **Chapter XVI**

#### **EXCEPTIONAL CASES OF ANNULLMENT, CANCELLATION AND CHANGES TO THE DECISION**

##### ***1. Changes and Cancellations of Decision Related to Administrative Dispute***

#### **Article 256**

An authority against whose decision an administrative dispute is timely instituted may nullify or change its own decision prior to settlement of the dispute and provided that it accepts all the requests of the appeal, for the same reasons for which the court may annul such decision, if this does not violate the right of the party regarding the administrative procedure or the rights of a third person.

##### ***2. Annulment and Cancellation Based on Official Supervision***

#### **Article 257**

- (1) A competent authority, based on the official supervision, shall nullify the decision that has been passed (issued) and submitted if:
  - (1) a truly incompetent authority issued it, and it is not one of the cases defined in Article 206, item 1 of this Law;
  - (2) if a different legally valid decision has been previously issued on the same administrative matter resolving it in a different manner;
  - (3) it was issued by an authority without consent, confirmation, approval or opinion of other authority in cases where this is obligatory according to the law or other regulations;
  - (4) it was issued by territorially incompetent authority;

- (5) it was issued as a result of coercion, extortion, blackmail, pressure or other illegal act.
- (2) If a state authority or organization is competent for issuing the decision and such decision was issued by the Government, such decision cannot be nullified based on the provision point 1, paragraph 1 of this Article.

#### **Article 258**

- (1) A decision may be nullified or cancelled based on the official supervision of a second instance authority. If there is no second instance authority, the decision can be nullified or cancelled by an authority competent to supervise the work of an authority that has issued the decision.
- (2) A competent authority shall issue a decision on annulment ex officio, at the request of a party or at the request of the State Prosecutor whereas the decision on cancellation is issued ex officio or at the request of the State Prosecutor.
- (3) The decision on annulment based on Article 257, paragraph 1, points 1 to 3 of this Law may be issued within five years, and decision on annulment based on point 4, paragraph 1 of the same Article may be issued within one year from the day the decision became final. The decision on annulment based on Article 257, paragraph 2 of this Law can be issued within one year from the day the decision became final.
- (4) The decision on annulment based on this Article 257, paragraph 1, point 5 of this Law may be issued regardless of the periods prescribed in paragraph 3 of this Article.
- (5) An appeal against a decision issued in line with the Article 257 of this Law is not permitted but an administrative dispute may be instituted against it.

### ***3. Exceptional Cancellation***

#### **Article 259**

- (1) Enforceable decision may be cancelled if it is necessary to remove serious and immediate life-threatening danger to people's health, public safety, order or public moral, or to remove dangers to irregularities in the economy, provided that this cannot be successfully provided by other means without impinging upon acquired rights. The decision can also be cancelled only partially, to the extent necessary to remove the danger or to protect the above-mentioned public interests.
- (2) If a first instance authority issues a decision pursuant to paragraph 1 of this Article, such a decision may be cancelled by that authority, but also by a second instance authority. If there is no second instance authority, the decision may be cancelled by an authority competent to perform supervision of the work of the authority that issued the decision.
- (3) An appeal against the decision by which a former decision is cancelled may be lodged

only if such decision was issued by a first instance authority. If the decision is issued by a second instance authority or the authority that performs supervision, an administrative procedure may immediately be instituted against that decision.

- (4) A party that suffers real damage due to the cancellation of the decision reserves the right to request compensation of damage, except for the compensation of lost profit. The request for the compensation for the damage shall be decided on through a civil procedure conducted by a competent court.

#### ***4. Declaring Decision Null***

##### **Article 260**

A decision shall be declared null when:

- (1) it was issued in the administrative procedure whereas it is in court's jurisdiction or if it concerns the matter that cannot be solved in an administrative procedure under any circumstances;
- (2) enforcement of such decision may result in a criminal act which can be prosecuted according to the Criminal Law;
- (3) execution of such decision is not possible;
- (4) it is issued by an authority without a prior request from a party (Article 177), and the party has not specifically agreed to it or remained silent about it;
- (5) if a party reached a favourable decision which is in collision with Article 11 of this Law;
- (6) it contains irregularity which a specific regulation defines as a reason for declaring it null and void.

##### **Article 261**

- (1) A decision can be declared null and void ex officio or at the request of a party or the State Prosecutor at any time.
- (2) A decision can be declared null as a whole or partially.
- (3) An appeal is permitted against the decision that declares other decision null as well as against a request of a party or State Prosecutor for declaring the decision null. If there is no authority competent to issue decision on the appeal, an administrative procedure can be instituted against such decision.

#### ***5. Legal Consequences of Annulment and Cancellation***

##### **Article 262**

- (1) By annulment of decision, legal consequences caused by such decision are annulled.
- (2) By cancellation of the decision, legal consequences that have already been caused by such

decision are not annulled but those legal consequences that may be caused in future shall be disabled.

- (3) Declaring the decision null may produce consequences defined in paragraph 1 of this Article. However, a party can, in a civil procedure, also request compensation for damage caused by the annulled decision.

***6. Duties to Inform Competent Authority on Existence of Reasons for Retrial, Annulment, Cancellation and Changes to the Decision***

**Article 263**

An authority that finds out that the law has been violated by a decision whereas such violation can justify retrial, annulment, cancellation and changes of the decision, shall inform, without any delay, the authority competent for instituting procedure and issuing the decision, i.e. the State Prosecutor, of this matter

**PART FOUR  
EXECUTION  
Chapter XVII**

***1. General Provisions***

**Article 264**

(1) Decisions adopted in the procedure shall be executed with a view to fulfilling monetary and non-monetary obligations.

(2) Decisions adopted in the procedure shall be executed when they become effective.

(3) First instance decisions shall become effective:

- 1) on expiry of appeals term, if the appeal has not been made;
- 2) on delivery to the party to the procedure, if no appeal could be made;
- 3) on delivery to the party to the procedure, if the appeal does not stay the execution;
- 4) on delivery to the party to the procedure of the decision rejecting or refusing the appeal.

(4) Second instance decisions changing the first instance decision shall take effect on delivery to the party to the procedure.

(5) If the decision specifies that the action that is the subject of execution may be performed within the specified period of time, the decision shall take effect on expiry of such period. If the decision does not specify the term for the performance of the action, the decision shall take effect within 15 days of the delivery date. The term permitted for execution under the decision, i.e. the 15-day period prescribed for execution, shall start as of the date when the decision referred to in paragraphs 3 and 4 of this Article takes effect.

(6) The execution can also be performed on the basis of a settlement, but only against persons taking part in the settlement.

(7) If the appeal stays the execution of the decision, and the decision refers to two parties to the procedure or more parties that take part in the procedure with identical requests, the appeal of any of the parties shall make the decision ineffective.

#### **Article 265**

(1) The conclusion made in the administrative procedure shall be executed when it takes effect.

(2) The conclusion that may be subject to special appeal and the conclusion that may be subject to appeal through a separate appeal that does not prevent its execution shall take effect on notification, and where no prior notification occurred, on delivery to the party to the procedure.

(3) When the law or the conclusion itself specifies that the appeal shall not prevent the execution of the decision, the decision shall take effect as of the expiry date for appeals if the appeal has not been made, and if it has been made – on delivery to the party to the procedure of the decision with which the appeal has been rejected or refused.

(4) In other cases, the conclusion shall take effect under the conditions governing the enforceability of the decision as prescribed in Article 264, paragraphs 4, 5 and 7 of this law.

(5) The provisions of this law on the execution of the decision shall also apply to the execution of the conclusion.

#### **Article 266**

(1) When there are several options open for the execution in terms of both methods and mechanisms of execution, the execution shall be administered by such mechanisms and methods as to result in the desired effect but also those that are most favourable to the subject of execution.

(2) Execution measures may be taken on a Sunday, during state holidays and at night only if there is danger of prolongation of procedure and if the authority in charge of execution has issued a separate written order on that.

#### **Article 267**

(1) Execution shall be administered against persons that are obligated to perform an obligation (subject of execution).

(2) Execution shall be administered either *ex officio* or following the request of the party to the procedure.

(3) The execution shall be administered *ex officio* in cases when it is in the public interest. The execution that is in the interest of the subject of execution shall be administered following the request of the party to the procedure (execution petitioner).

**Article 268**

The execution of a decision shall be administered through an administrative procedure (administrative execution) and, in cases as envisaged by this law, through a judicial procedure (judicial execution).

**Article 269**

(1) The execution for the fulfilment of monetary and non-monetary obligations of subjects of execution shall be administered through an administrative procedure.

(2) The execution of deeds on property and shares in a company or other form of business organization shall be administered through a judicial procedure under the law governing the execution procedure.

**Article 270**

(1) The administrative execution shall be administered by the authority in charge of the first instance procedure, unless otherwise prescribed by other regulation.

(2) Public office holders may enforce their decisions provided they obtain the permission from the minister competent for state administration, or the mayor.

(3) If it is prescribed that an administrative execution cannot be administered by the authority that was in charge of that administrative case in the first instance, and the special regulation does not specify which authority is responsible, the execution shall be administered by the state authority competent for the territory of permanent residence, or temporary residence or the headquarters of the object of execution, unless otherwise specified by the law.

(4) The authority competent for internal affairs shall be obligated to provide the authority responsible for execution, at its request, with assistance in the execution procedure.

**Article 271**

(1) The authorized authority shall adopt, either ex officio or on the request of the execution petitioner, the conclusion authorizing the execution. Such conclusion shall state that the decision to be executed has become effective and define the method and mechanisms of execution. Appeals can be lodged against such a conclusion to the relevant second instance authority.

(2) If it is the decision referred to in Article 133, sub-paragraph 4, the conclusion authorizing the execution, method, term and mechanisms of execution shall be included in the decision so that no separate conclusion approving the execution shall be issued.

(3) The conclusion authorizing the execution of the decision that was adopted in the administrative procedure ex officio shall be promptly adopted by the authority in charge of execution of decisions when such a decision takes effect, not later than within 30 days of the date the decision takes effect, unless otherwise prescribed by another regulation. Failure to adopt the conclusion within date period does not eliminate the obligation to adopt it.

(4) When a decision is not executed by the authority that adopted it in the first instance, the petitioner of execution shall submit the proposal for the approval of execution to the authority that adopted the decision to be executed. If the decision has become effective, that authority shall issue a document to confirm that the decision has become effective (notification of effect) and submit it for execution to the authority in charge of execution, while at the same time proposing the method and mechanisms of execution. The authority in charge of execution shall issue a conclusion authorizing the execution.

(5) When the decision issued by the authority that is not in charge of execution must be administered ex officio, that authority shall submit an approval proposal for execution to the authority in charge of execution after the procedure prescribed in paragraph 3 of this Article has been completed.

#### **Article 272**

(1) The administrative execution that is administered by the authority that was in charge of the procedure in the first instance shall be administered under the decision that took effect and the conclusion authorizing the execution.

(2) The administrative execution that is not administered by the authority that was in charge of the procedure in the first instance, shall be administered under the decision that includes the approval of enforceability and the conclusion authorizing execution.

#### **Article 273**

(1) During the administrative execution procedure, an appeal can be lodged only against the execution, and cannot be used to dispute the regularity of decision that is being executed.

(2) The appeal shall be lodged to the competent second instance authority. The appeal shall not prevent the execution. The appeal deadline and authority in charge of appeals procedure shall be subject to the provisions of Articles 221 to 225 of this Law.

#### **Article 274**

(1) The administrative execution shall be suspended ex officio and the steps already made annulled if it is established that the obligation has not been performed in its entirety, that the execution has not been authorized, that it has been administered against a person not having such an obligation, and if the petitioner of execution drops the petition or if the execution document has been annulled or cancelled.

(2) The administrative execution shall be prolonged if it is established that there is a clause allowing for delayed performance of obligation, or that instead of the temporary decision that is administered, another decision has been made relating to the major subject that is different from that in the temporary decision. The prolongation of execution shall be authorized by the authority that has issued the conclusion authorizing the execution.

**Article 275**

(1) Decisions on monetary obligations, i.e. fines pronounced under this law or regulations on special administrative procedure, shall be executed by the administrative authority in charge of public revenues.

(2) The fine shall be collected to the benefit of the budget financing operations and the authority that has pronounced the fine.

**Article 276**

(1) When judicial execution needs to be administered of a decision made in the administrative procedure, the authority whose decision is to be executed shall issue a conclusion authorizing the execution (Article 271, paragraph 3) and submit it for execution to the court having jurisdiction over its execution.

(2) The decision made in the procedure that includes the execution authorization shall be the basis for the judicial execution. This execution shall be administered under the provisions of the law regulating the execution procedure and provisions of other laws applied to judicial execution.

**2. Execution of Non-Financial Obligations**

**Article 277**

The execution for fulfilment of non-financial obligations of subjects of execution shall be administered through other persons, or by coercion.

**a) Execution through other Persons**

**Article 278**

(1) If the obligation of the subject of execution includes the performance of an action that can also be performed by another person, and the subject of execution does not perform it at all or does not perform it in its entirety, that action shall be executed through another person, at the expense of the subject of execution. Such subject of execution must be notified of this in advance.

(2) In the case referred to in paragraph 1 of this Article, the authority in charge of execution can issue a conclusion ordering the party that is the subject of execution to put up the amount required to settle expenses of execution, with the accounts being settled subsequently. The conclusion on putting up such an amount shall be effective.

**b) Execution by Coercion**

**Article 279**

(1) If the subject of execution is obligated to permit or suffer something, and it acts contrary to such an obligation, or if the execution is the action of subject of execution that cannot be performed by another person, the authority in charge of execution shall force the subject of execution to fulfil its obligation by a coercive measure, i.e. by a fine.

(2) The authority in charge of execution shall first threaten the subject of execution by the use of coercive mechanism, should he/she not perform his/her obligation in the prescribed term. If

the subject of execution within such period takes an action contrary to his/her obligation or if the period expires without such performance, the threatened coercive mechanism shall take effect immediately, and the new term shall be set for the execution, and a new, stricter coercive measure threatened.

(3) A fine that pursuant to paragraph 1 of this Article is imposed for the first time on a legal person, shall range from 500 to 5,000 Euros, and when imposed on a private person, it shall range from 50 to 500 Euros. A fine can be repeatedly imposed as long as the obligation had been fulfilled.

(4) The collected fine shall not be returned.

#### **Article 280**

If the execution of a non-financial obligation in due time or generally cannot be performed through implementation of mechanisms referred to in Articles 278 and 270 of this law, depending on the nature of obligation, the execution can also be administered through direct coercion, unless otherwise prescribed by the regulation.

#### **Article 281**

(1) When a decision is followed by execution, and the decision is later annulled or changed, the subject of execution shall have the right to request the refund of what has been taken away from him/her, or that the matter shall be returned to the condition arising from the later decision.

(2) The request of the subject of execution shall be decided on by the authority that has issued the conclusion authorizing the execution.

### **Chapter XVIII SAFEGUARD EXECUTION AND TEMPORARY DECISION**

#### ***1. Safeguard Execution***

##### **Article 282**

(1) So as to ensure execution, the conclusion can permit the execution of the decision even before it takes effect, if the execution would otherwise be threatened or made considerably more difficult after the decision takes effect.

(2) If these are obligations that are executed by coercion only following the request of the party, such a party must prove the threat, and the authority can order the execution referred to in paragraph 1 of this Article conditional on the provision of guarantee in accordance with Article 211, paragraph 2 of this law.

(3) Special appeals can be lodged against the conclusion issued on the proposal of the party for safeguard execution, as well as against the conclusion issued ex officio. The appeal against the conclusion prescribing the safeguard execution shall not prevent the execution.

**Article 283**

(1) Safeguard execution can be administered through either administrative or judicial procedures, and the safeguard execution over property or shares in companies or other forms of business organization shall be administered through a judicial procedure under the provisions of the Law on Execution Procedure.

(2) When the safeguard execution is administered through a judicial procedure, the court shall in accordance to the law regulating the execution procedure and the provisions of other laws applicable to judicial execution.

**Article 284**

The execution of a temporary decision can be administered only to the extent and in those cases when such safeguard execution is permitted.

**2. Temporary Safeguard Conclusion**

**Article 285**

(1) If there is the obligation of the party or if it has at least been made possible, and there is danger that the party under obligation will somehow threaten or make considerably more difficult the performance of obligation, the authority in charge of issuing the decision specifying the obligation of the party can issue a temporary conclusion so as to guarantee the execution of obligation before the decision specifying that obligation is made. When issuing the temporary conclusion on the obligation, the authority in charge must take into consideration the provision contained in Article 266, paragraph 1 of this law and support the conclusion with appropriate explanation.

(2) The issuing of a temporary conclusion can be made conditional on provision of guarantee envisaged by Article 211, paragraph 2 of this law.

(3) The temporary conclusion issued under paragraph 1 of this Article shall be subject to provisions of Article 282, paragraph 3 and Article 283 of this law.

**Article 286**

(1) If the final decision specifies that in legal terms there is no obligation on the part of the party that is the subject of temporary conclusion to guarantee execution or if it is established in some other way that the request for the issuing of temporary conclusion has been unfounded, the party submitting such a request and to whose benefit the temporary conclusion has been issued, shall be obligated to pay damages to the other party for the damage caused by the issued conclusion.

(2) The damages referred to in paragraph 1 of this Article shall be decided on by the authority that has issued the temporary conclusion if the requesting party agrees to pay such damages. If the requesting party does not agree to pay damages, the adverse party can lodge its damage claims to the competent court in civil proceedings.

**PART FIVE**  
**IMPLEMENTATION OF THE LAW, INSPECTION CONTROL AND**  
**TRANSITIONAL AND FINAL PROVISIONS**  
**Chapter XIX**  
**IMPLEMENTATION OF THE LAW**

**Article 287**

(1) Decisions adopted in administrative procedures shall be subject to official record keeping.

(2) The records referred to in paragraph 1 of this Article shall include the following data: number of lodged requests; number of procedures initiated ex officio; method and terms allowed for administrative procedures at first instance and second instance levels; number of nullified, or cancelled administrative acts, as well as number of rejected requests, and the number of terminated procedures.

(3) Data referred to in paragraph 2 of this Article shall be kept and represented by the authorities by respective areas of administrative affairs. The said authorities shall report the same to the ministry responsible for monitoring of their work twice a year.

**Article 288**

The sums collected from the pronounced fines by the authorities in charge of the procedure shall be paid into the republican budget, or the budget of the local self-government unit.

**Article 289**

(1) Summons, delivery notes, orders to bring in parties, records and other documents used in the procedure shall be made in the prescribed forms.

(2) Forms referred to in paragraph 1 of this Article shall be determined by the administrative authority competent for state administration.

**INSPECTION CONTROL**

**Article 290**

(1) Inspection control over the implementation of provisions of the law and other regulations on the administrative procedure governing the efficiency and timeliness in administrative matters, procedure in accordance with rules of procedures, legal aid and cost of administrative procedure, implementation of regulations in office work and record keeping, shall be done by the administrative authority competent for state administration.

(2) The authority referred to in paragraph 1 of this Article shall also perform the inspection control over the implementation of the law and other regulations in the area of state administration system with regard to the organization of administration, transparency of work, equality in the use of language and script, and the qualifications of staff involved in state administration affairs.

(3) The inspection control referred to in paragraphs 1 and 2 of this Article shall be performed in state administration authorities, courts, local government authorities, services within republican and municipal authorities, but also in companies, institutions, and other legal persons holding public authority.

#### **Article 291**

The inspection control over the implementation of the law and other regulations referred to in Article 290 shall be done by administrative inspectors in accordance with the Law on Inspection Control.

#### **Article 292**

(1) In cases of non-performance, unconscientiously, untimely or negligent performance of official obligations, abuse of office or exceeding the authority relating to the implementation of administrative procedure rules, decision making, official records keeping, office work, rejection of or provision with false data of the administrative inspector, all of which are necessary for his function, the administrative inspector shall have the authority to impose the following administrative measures:

- 1) fine up to 30% of the civil servant's salary for the preceding month;
- 2) ban on the civil servant from doing work related to administrative affairs, record keeping and office work.

(2) In cases referred to in paragraph 1, sub-paragraph 2 of this Article, the inspector shall submit a request within eight days for disciplinary procedure to be initiated.

(3) The measures referred to in sub-paragraph 2, paragraph 1 of this Article shall last until the completion of the disciplinary procedure.

#### **Article 293**

When the administrative inspector finds that the civil servant working on administrative matters, official records or office work does not meet the prescribed requirements, he shall be removed from office.

### **Chapter XX TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 294**

Administrative procedures that have been initiated before this law comes into effect shall be subject to the provisions of this law, unless the procedure has resulted in the final decision, if that is more favourable for the party.

**Article 295**

(1) Secondary legislation based on this law shall be enacted within six months of the date this law comes into effect.

(2) Until regulations referred to in paragraph 1 of this Article are adopted, secondary legislation enacted on the basis of the Law on General Administrative Act ("Official Gazette of the Federal Republic of Yugoslavia" No. 33/97) shall be used.

**Article 296**

As of the date this law comes into effect, the provisions of Article 26 and Chapter "IV Administrative Inspection" and Articles 29-32 of the Law on Inspection Control ("Official Gazette of the Republic of Montenegro, No. 50/92) shall become invalid.

**Article 297**

This law shall come into effect on the eight day of its publication in the "Official Gazette of the Republic of Montenegro".